SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 624.

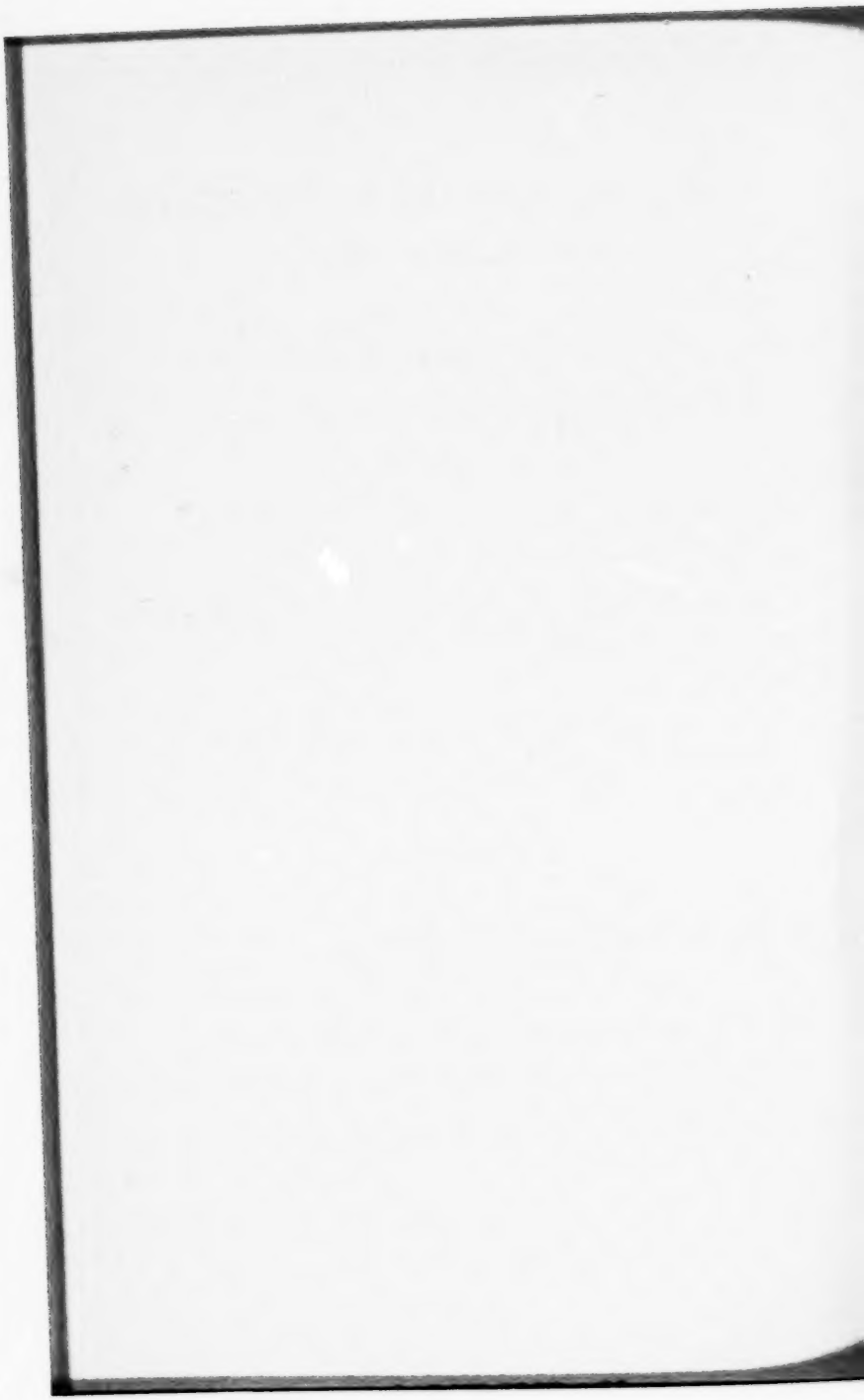
THE UNITED STATES, PETITIONER,

vs.

NORTHERN PACIFIC RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.



a [Original.]

Transcript of record. United States Circuit Court of Appeals, Eighth Circuit. No. 4015. Northern Pacific Railway Company, plaintiff in error, vs. United States of America, defendant in error. In error to the District Court of the United States for the District of North Dakota. Filed August 2, 1913.

a1 Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1913, of said court, before the Honorable Walter H. Sanborn and the Honorable William C. Hook, circuit judges, and the Honorable William H. Pope, district judge.

Attest:

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the second day of August, A. D. 1913, a transcript of record pursuant to a writ of error directed to the District Court of the United States for the District of North Dakota was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Northern Pacific Railway Company is plaintiff in error and the United States of America is defendant in error, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, is in the words and figures following, to wit:

1 In the District Court of the United States for the District of North Dakota, Southeastern Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, DEFENDANT.

Pleas before the honorable Frank A. Youmans, United States district judge for the Western District of Arkansas, presiding in said United States District Court for the District of North Dakota, under assignment.

Be it remembered that on the 14th day of September, A. D. 1912, a complaint was filed in this action, which complaint is in words and figures following, to wit:

Complaint.

In the District Court of the United States for the District of North Dakota, Southeastern Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, DEFENDANT.

Now comes the United States of America, by Edward Engerud, United States attorney for the District of North Dakota, and brings this action on behalf of the United States against the Northern Pacific Railway Company, a corporation organized and doing business under the laws of the State of Wisconsin and having an office and place of business at Jamestown, in the State of North Dakota, this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission and upon information furnished by said commission.

For a first cause of action plaintiff alleges that defendant is and was during all the times mentioned herein a common carrier engaged in interstate commerce by railroad in the State of North Dakota, and that the railroad of said defendant runs through the district established by law as the judicial district of said court.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of section 20 of the act of Congress known as "An act to regulate commerce," ap-
2 proved February 4, 1887 (24 Statutes at Large 379), as amended by an act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an act approved June 18, 1910 (36 Statutes at Large, 556), which order of said commission is in the words and figures following, to wit:

It is ordered that all carriers subject to the provisions of the act entitled "An act [act] to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act; defendants having theretofore failed to make and file with said commission in any form whatsoever a report of all the instances wherein its employees subject to said "act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of October, 1911, for a longer period than that provided in said act, did, on the first day of December, 1911, continue to be in default with respect thereto, and did fail to make and file with said commission any report of the following in-

stances in which employees of said railroad within the scope of said act, were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four hour periods during said month of October, 1911, for a longer period of service than that provided in said act, to wit:

First. That wherein Locomotive Engineer L. F. O'Leary and Fireman J. B. Cowden engaged in and connected with the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were, by defendant, required and permitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to wit, from the hour of 8.10 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Second. That wherein Train Conductor F. J. Osborne and Brakemen E. M. Bumgardner and F. W. Shuey engaged in and connected with the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton in said State, were, by defendant, required and per-
3 mitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to wit, from the hour of 7.30 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Plaintiff further alleges that by reason of said violation of said order of the Interstate Commerce Commision defendant is liable to the plaintiff in the sum of one hundred dollars.

For a second cause of action plaintiff alleges that defendant is and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of North Dakota and that the railroad of said defendant runs through the district established by law as the judicial district of said court.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of section 20 of the act of Congress known as "An act to regulate commerce," approved February 4, 1887 (24 Statutes at Large, 379), as amended by and act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an act approved June 18, 1910 (36 Statutes at Large, 556), which order of said commission is in the words and figures following, to wit:

It is ordered that all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath all instances where employees subject to said act have been on duty for a longer period than that provided in

said act, defendant, having theretofore failed to make and file with said commission in any form whatsoever a report of all the instances wherein its employees subject to said "act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of October, 1911, for a longer period than that provided in said act, did, on the second day of December, 1911, continue to be in default with respect thereto, and did fail to make and file with said commission any report of the following instances in which employees of said railroad, within the scope of said act, were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four hour periods
4 during said month of October, 1911, for a longer period of service than that provided in said act, to wit:

First. That wherein Locomotive Engineer L. F. O'Leary and Fireman J. B. Cowden, engaged in and connected with the movement of defendant's train extra 1667 drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and moving from Jamestown, in the State of North Dakota, to Mapleton, in said State, were, by defendant, required and permitted to be and remain on duty as aforesaid, for a longer period than sixteen consecutive hours, to wit, from the hour of 8.10 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Second. That wherein Train Conductor F. J. Osborne and Brakemen E. M. Bumgardner and F. W. Shuey, engaged in and connected with the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were, by defendant, required and permitted to be and remain on duty as aforesaid, for a longer period than sixteen consecutive hours, to wit, from the hour of 7.30 p. m., on October 29, 1911, to the hour of 1.15 p. m., on October 30, 1911.

Plaintiff further alleges that by reason of said violation of said order of the Interstate Commerce Commission defendant is liable to the plaintiff in the sum of one hundred dollars.

For a third cause of action plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of North Dakota, and that the railroad of said defendant runs through the district established by law as the judicial district of said court.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of section 20 of the act of Congress known as "An act to regulate commerce," approved February 4, 1887 (24 Statutes at Large, 379), as amended by an act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an act approved June 18, 1910 (36

Statutes at Large, 556), which order of said commission is in the words and figures following, to wit:

5 It is ordered, That all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon, approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act, defendant, having theretofore failed to make and file with said commission in any form whatsoever a report of all the instances wherein its employees subject to said "Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of October, 1911, for a longer period than that provided in said act, did, on the third day of December, 1911, continue to be in default with respect thereto, and did fail to make and file with said commission any report of the following instances in which employees of said railroad within the scope of said act were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four-hour periods during said month of October, 1911, for a longer period of service than that provided in said act, to wit:

First. That wherein Locomotive Engineer L. F. O'Leary and Fireman J. B. Cowden, engaged in the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were by defendant required and permitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to wit, from the hour of 8.10 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Second. That wherein Train Conductor F. J. Osborne and Brakemen E. M. Bumgardner and F. W. Shuey, engaged in and connected with the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were by defendant required and permitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to wit, from the hour of 7.30 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Plaintiff further alleges that by reason of said violation of said order of the Interstate Commerce Commission defendant is liable to the plaintiff in the sum of one hundred dollars.

6 For a fourth cause of action plaintiff alleges that defendant is and was during all the times mentioned herein a common carrier engaged in interstate commerce by railroad in the State of North Dakota, and that the railroad of said defendant runs through the district established by law as the judicial district of said court.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of section 20 of the act of Congress known as "An act to regulate commerce," approved February 4, 1887 (24 Statutes at Large, 379), as amended by an act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an act approved June 18, 1910 (36 Statutes at Large, 556), which order of said commission is in the words and figures following, to wit:

It is ordered, That all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act, defendant, having theretofore failed to make and file with said commission in any form whatsoever a report of all the instances wherein its employees subject to said "Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of October, 1911, for a longer period than that provided in said act, did, on the fourth day of December, 1911, continue to be in default with respect thereto, and did fail to make and file with said commission any report of the following instances in which employees of said railroad within the scope of said act were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four-hour periods during said month of October, 1911, for a longer period of service than that provided in said act, to wit:

First. That wherein Locomotive Engineer L. F. O'Leary and Fireman J. B. Cowden, engaged in and connected with the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were by defendant required and permitted to
7 be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to-wit, from the hour of 8.10 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Second. That wherein Train Conductor F. J. Osborne and Brakemen E. M. Bumgardner and F. W. Shuey engaged in and connected with the movement of defendant's train extra 1667 drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown in the State of North Dakota to Mapleton, in said State, were, by defendant required and permitted to be and remain on duty as aforesaid, for a longer period than sixteen consecutive hours, to-wit, from the hour of 7.30 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Plaintaiff further alleges that by reason of said violation of said order of the Interstate Commerce Commission defendant is liable to the plaintiff in the sum of one hundred dollars.

For a fifth cause of action plaintiff alleges that defendant is and was during all the times mentioned herein a common carrier engaged in interstate commerce by railroad in the State of North Dakota, and that the railroad of said defendant runs through the district established by law as the judicial district of said court.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of section 20 of the act of Congress known as "An act to regulate commerce," approved February 4, 1887 (24 Statutes at Large, 379), as amended by an act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an act approved June 18, 1910 (36 Statutes at Large, 556), which order of said commission is in the words and figures following, to-wit:

It is ordered, That all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act, defendant having theretofore failed to make and file with said commission in any form whatsoever a report of all
8 the instances wherein its employees subject to said "Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of October, 1911, for a longer period than that provided in said act, did, on the fifth day of December, 1911, continue to be in default with respect thereto, and did fail to make and file with said commission any report of the following instances in which employees of said railroad within the scope of said act, were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four-hour periods during said month of October, 1911, for a longer period of service than that provided in said act, to-wit:

First. That wherein Locomotive Engineer L. F. O'Leary and Fireman J. B. Cowden, engaged in and connected with the movement of defendant's train extra 1667 drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown in the State of North Dakota to Mapleton in said State, were, by defendant, required and permitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to-wit, from the hour of 8.10 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Second. That wherein Train Conductor F. J. Osborne and Brakemen E. M. Bumgardner and F. W. Shuey, engaged in and connected

with the movement of defendant's train extra 1667 drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were, by defendant, required and permitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to-wit, from the hour of 7.30 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911. Plaintiff further alleges that by reason of said violation of said order of the Interstate Commerce Commission defendant is liable to the plaintiff in the sum of one hundred dollars.

Wherefore, plaintiff prays judgment against defendant in the sum of five hundred dollars and its costs herein expended.

EDWARD ENGERUD, *United States Attorney.*

Filed in the District Court on September 14, 1912.

Amended answer.

The defendant for its amended answer to the complaint of the plaintiff herein alleges as follows:

9 I.

It admits that it is now and during all the times mentioned in the complaint a common carrier engaged in interstate commerce by railroad in the State of North Dakota, all as alleged in each of the several causes of action herein.

II.

Defendant admits that it moved its train, extra 1667, drawn by N. P. engine 1667, between Jamestown and Mapleton, both in the State of North Dakota, on October 29th and October 30th, 1911, and that L. F. O'Leary was the locomotive engineer and J. D. Cowden was the fireman in charge of the engine drawing said train, and that F. J. Osborne was the train conductor and E. M. Bumgardner and F. W. Shuey were the brakemen in charge of said train; that defendant also admits that said train was engaged at said time and place in carrying interstate commerce.

III.

Defendant further alleges that the train crew, consisting of the conductor and brakemen above named, were called for duty for the movement of a wrecker train at 7.30 o'clock in the afternoon of October 29, 1911, but defendant further alleges that said train crew were released at such hour; that they had no duty to perform, as such crew and did not begin performing any such service for the defendant until 10.35 o'clock p. m. of the same date.

IV.

Further answering said complaint, and each of the causes of action therein stated, defendant alleges that the engine crew were called for the hour of 8.10 p. m. on October 29, 1911, to move a train eastward upon defendant's line of railroad; but that the train for which they were called was a wrecker train intended to be used in removing a wreck from the line of defendant's railway between Jamestown and Mapleton; but that at the said hour of 8.10 p. m. it was found that it was not necessary to send a wrecker train for the purpose aforesaid, and thereupon the said engine crew were notified they would not be required for service until the hour of 10.35 p. m. of the same day, at which last-named hour they would be required for duty in moving a commercial extra freight train east; and defendant alleges that the said engine crew did not perform any work or render any service to the defendant between the hours of 8.10 p. m. and 10.35 p. m. on said October 29, 1911, save that they kept alive the fire in the engine during said period.

10 V.

For a separate and further defense to said complaint and the several causes of action therein stated, defendant alleges that in the movement of said train from Jamestown to Mapleton, certain casualties and unavoidable accidents occurred and certain delays happened, which delays were the results of causes not known to the defendant or its officers or agents at the time the said crew left Jamestown, and which causes could not have been foreseen, to wit:

That at Brackett, a station intermediate between Jamestown and Mapleton, and which station was reached at or about 10.10 a. m. on October 30, 1911, certain boxes upon cars composing said train became heated, so that it became necessary for said train to be stopped until such trouble could be corrected; and that fifty minutes was consumed in repacking the boxes and getting the train in condition to be moved; also that between Wheatland and Casselton a similar trouble occurred in the boxes on the same cars, by reason of which fact an additional fifteen minutes was necessary, such time being used by the train crew in work upon such hot boxes; that the said train arrived at Mapleton at the hour of 1.15 p. m. on October 30, 1911, at which time both the engine crew and the train crew thereon were released from service, and defendant says that by reason of the facts hereinbefore set forth neither the train crew nor the engine crew were required or permitted to be or remain on duty as such employees for a longer period of service than that provided in the act of Congress in the complaint mentioned; and by reason of such fact it was not encumbent upon this defendant to make to the Interstate Commerce Commission the report in the complaint and the said several causes of action therein, set forth.

VI.

As a further defense herein to the complaint, and to each of the several causes of action therein set forth, defendant alleges that both the engine crew and the train crew referred to therein were called for service in manning and operating the so-called wrecker train which it was intended should travel east from Jamestown for the purpose of removing a wreck; but that before said train was actually made up or ready to depart, it was discovered by defendant that the same would not be required for the purpose of removing such wreck and thereupon the sending out of such wrecker train was abandoned, and the train crew and the engine crew were released as hereinbefore fully set forth; that said crews were thereafter called for duty in the operation of a commercial extra train moving east, and
11 which left the terminal, Jamestown, at 10.35 p. m.; that by reason of the facts hereinbefore set forth, and especially the abandonment of said wrecker train, for which said crews were originally called, the defendant did not understand that under the then existing regulations of the Interstate Commerce Commission a report was necessary or was required in respect of the work done and services rendered by said crews in the movement of said commercial freight train. Defendant further alleges that on or about November 29, 1912, defendant filed with the Interstate Commerce Commission a report in writing of all instances where its employees were employed more than the statutory period during the month of October, 1911; that said report was made under oath in the form and in accordance with the regulations of the Interstate Commerce Commission, and such report contained a large number of instances where employees of defendant for some reason or other, as in said report set forth, had been employed for more than the period allowed by the statute; that if the instances referred to in the several causes of action set forth in the complaint herein were not contained or set forth in the report thus filed by the defendant on November 29, 1912, the omission thereof was through inadvertence and by mistake, and was due to the fact that this defendant did not consider or understand that the instances referred to in the several causes of action set forth in the complaint herein were in fact violations of the statute, or that it was necessary or required that the same should be included in said report; and said defendant alleges that the said report thus submitted by it and filed with the Interstate Commerce Commission was intended to be full, true, correct, and complete in every particular, and to embrace any and all instances where employees of this company had been kept in its service for more than the statutory hours of service, and that any violations or omissions in such report were due to oversight, error, and mistake upon the part of this defendant and were not any intentional violations of the orders of the Interstate Commerce Commission in that behalf.

Wherefore defendant prays that it may be hence dismissed with its costs.

WATSON & YOUNG,
Attorneys for Defendant, Fargo, North Dakota.

STATE OF NORTH DAKOTA,
County of Cass, ss:

J. S. Watson, being first duly sworn, doth depose and say that he is one of the attorneys for the defendant in the above-entitled action; that he had read the above and foregoing
12 answer and knows the contents thereof; and that the same is true to his best knowledge, information, and belief.

J. S. WATSON.

Subscribed and sworn to before me this 3d day of May, 1913.

[SEAL.] GRACE L. MEADE,
Notary Public, Cass County, North Dakota.

My commission expires June 14, 1913.

Endorsed: Amended answer. Personal service of the within amended answer is hereby admitted this 5th day of May, 1913, at Fargo, N. D. Edward Engerud, attorney for plff. Filed May 5, 1913. J. A. Montgomery, clerk.

Judgment, June 4, 1913.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, DEFENDANT,

This case came on to be heard on motion for judgment on the pleadings, the plaintiff appearing by Edward Engerud, United States attorney, and the defendant by Watson & Young, its attorneys, and after hearing arguments of counsel and due consideration it is

Ordered that said motion be granted, to which order the defendant duly excepts.

Whereupon it is ordered that the plaintiff have judgment against the defendant as prayed for in its complaint.

Now it is ordered and adjudged that the plaintiff have and recover of the defendant, Northern Pacific Railway Company, the sum of five hundred dollars ($500.00) damages, together with the sum of $32.30, its costs and disbursements herein, and have execution therefor.

Petition for writ of error.

The defendant, Northern Pacific Railway Company, by its counsel, comes and says that in the record and proceedings in this cause there

is manifest error in this, to wit, in the particulars appearing in the assignment of errors hereto annexed as a part of this petition.

Wherefore for these and other errors appearing in the record defendant prays for the allowance and issuance of a writ of error herein from the United States Circuit Court of Appeals to the United States District Court for the District of North Dakota,
13 Southeastern Division, to the end that a transcript of the record, proceedings, and papers herein, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

Dated July 10th, 1913.

WATSON & YOUNG,
Attorneys for Defendant.

Filed in the District Court on July 10, 1913.

Assignment of errors.

The court erred, for the following reasons, in granting plaintiff's motion for judgment and in rendering judgment against defendant upon the pleadings:

1. Because it appears and was conceded that the defendant made to and filed with the Interstate Commerce Commission upon November 20, 1912, a full report of all cases of over hours of service occurring upon its lines for the preceding month of October.

2. Because it appears and was conceded that in the instances mentioned in the complaint the trainmen were in no manner employed beyond the limit fixed by the statute set forth in the complaint, and such trainmen in fact were employed only from 10.35 o'clock p. m. October 29, 1912, until 1.15 o'clock p. m. of the following day.

3. Because it appears and was conceded that the engineer and fireman were in no manner employed beyond the limit fixed by the statute, and in fact only from 10.35 o'clock p. m. on October 29, 1912, until 1.15 o'clock p. m. the fol'owing day, their service in keeping up fires in said engine from 7.30 p. m. to 10.35 p. m. on October 29th not constituting a service within the meaning of the act of Congress set forth in the complaint.

4. Because it appears and was conceded that if the instances mentioned in the complaint were not in fact set out in defendant's report filed November 29, 1912, with the Interstate Commerce Commission, the omission thereof from such report occurred by accident and mistake, was unintentional upon defendant's part, and the report as actually filed was intended to be full, true, correct, and complete in every particular and was intended to embrace all instances of over-service for the period covered thereby.

5. Because it appears and was conceded that any omissions in such report covering hours of over-service during the month of
14 October, 1912, were due to oversight, error, and mistake and were not intentional violations of the commissioner's rule.

6. Because upon all the facts stated in defendant's amended answer, and admitted by plaintiff, no liability arose, and the court erred in adjudging that defendant was guilty of violating the statutes set forth in the complaint.

WATSON & YOUNG,
Attorneys for Defendant, Northern Pacific Railway Company.

Filed in the District Court on July 10, 1913.

Supersedeas bond.

Know all men by these presents, That we, Northern Pacific Railway Company, a corporation, as principal, and National Surety Company of New York, as surety, are held and firmly bound unto the United States of America in the full and just sum of one thousand dollars ($1,000.00) to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated this 10th day of July, A. D. 1913.

Whereas, lately, at the May, 1913, term of the United States District Court for the District of North Dakota, Southeastern Division, in a [suot] pending in said court between the above-named parties judgment was rendered against the Northern Pacific Railway Company, and the said Northern Pacific Railway Company has obtained a writ of error of the said court to reverse said judgment, and a citation directed to the said United States of America, citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the city of St. Paul, Minnesota, sixty days from and after the date of said citation.

Now, therefore, the consideration of the above obligation is such that if the said Northern Pacific Railway Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make good its appeal, then the above obligation to be void, else to remain in full force and virtue.

NORTHERN PACIFIC RAILWAY COMPANY,
By WATSON & YOUNG, *Its Attorneys.*
[SEAL.]
NATIONAL SURETY COMPANY,
By R. C. MOORE, *Resident Asst. Sec.*

15 STATE OF NORTH DAKOTA,
County of Cass, ss.

On this 10th day of July, 1913, before me appeared R. C. Moore, to me personally known, who being by me duly sworn, did say that he is resident asst. secy. of the National Surety Company, of New York, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by author-

ity of its board of directors, and said R. C. Moore acknowledged said instrument to be the free act and deed of said corporation.

[SEAL.] J. S. WATSON,
Notary Public.

My commission expires Nov. 21, 1916.
Filed in the District Court on July 10, 1913.

Writ of error.

UNITED STATES OF AMERICA—*ss.*

The President of the United States of America to the honorable judge of the District Court of the United States for the District of North Dakota, Southeastern Division, greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in said District Court before you, at the May, 1913, term thereof, between the United States of America, plaintiff, and the Northern Pacific Railway Company,. defendant, a manifest error hath happened, to the great damage of the said Northern Pacific Railway Company, as is set forth, and as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ, so that you have said record and procedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit on or before the 8th day of September, 1913, to the end that the records and procedings aforesaid being inspected, the United States Circuit Court of Appeals
16 may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness, the Hon. Edward D. White, Chief Justice of the Supreme Court of the United States, this 10″ day of July, 1913.

[Seal U. S. District Court Dist. of North Dakota.]

Issued at office in Fargo, North Dakota, with seal of the United States District Court for the District of North Dakota, and dated as aforesaid.

J. A. MONTGOMERY,
Clerk United States District Court for the District of North Dakota.

The foregoing writ of error is hereby allowed.

CHARLES F. AMIDON,
United States District Judge for the District of North Dakota.

UNITED STATES OF AMERICA,
District of North Dakota—ss.

In obedience to the command of the within writ I herewith transmit to the United States Circuit Court of Appeals a duly certified transcript of the record and proceedings in the within-entitled case and all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of the District Court of the United States for the District of North Dakota this 18″ day of July, A. D. 1913.

[Seal U. S. District Court Dist. of North Dakota.]

J. A. MONTGOMERY,
Clerk United States District Court.

Citation.

United States of America to United States of America, greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the United States District Court for the District of North Dakota, Southeastern Division, wherein Northern Pacific Railway Company is plaintiff in error and you are defendant in error,
17 to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the honorable Charles F. Amidon, judge of the District Court of the United States for the District of North Dakota, this 10th day of July, A. D. 1913.

CHARLES F. AMIDON, *Judge.*

Personal service of the above citation, by copy thereof, is hereby admitted at Fargo, North Dakota, this 14th day of July, A. D. 1913.

EDWARD ENGERUD,
Attorney for Defendant in Error.

Clerk's certificate to transcript.

UNITED STATES OF AMERICA,
District of North Dakota—ss.

I, J. A. Montgomery, clerk of the United States District Court for the District of North Dakota, do hereby certify that the foregoing pages, from 1 to 27, contain true and faithful transcripts of all those portions of the pleadings, process, and proceedings of record and on file in my office as said clerk, designated by the parties thereto, and the whole thereof, and the indorsements thereon, in the case of

"United States of America, plaintiff, versus Northern Pacific Railway Company, defendant."

[Seal U. S. District Court Dist. of North Dakota.]

Witness my hand and the seal of said United States District Court, at Fargo, in said district, this 18th day of July, A. D. 1913.

J. A. MONTGOMERY, *Clerk.*

Filed Aug. 2, 1913. John D. Jordan, clerk.

18 Appearance of Messrs. Watson & Young, as counsel for plaintiff in error.

United States Circuit Court of Appeals, Eighth Circuit.

No. 4015. Northern Pacific Railway Company, plaintiff in error, vs. United States of America. The clerk will enter my appearance as counsel for the plaintiff in error.

J. S. WATSON,
N. C. YOUNG,
Fargo, N. Dak.

(Endorsed:) Filed in U. S. Circuit Court of Appeals on Aug. 2, 1913.

Appearance of Mr. Edward Engerud and Mr. M. A. Hildreth, as counsel for defendant in error.

The clerk will enter my appearance as counsel for the defendant in error.

EDWARD ENGERUD,
U. S. Attorney,
M. A. HILDRETH,
Asst. U. S. Atty., for Deft. in Error.

(Endorsed:) Filed in U. S. Circuit Court of Appeals on Sept. 11, 1913.

Appearance of Mr. Emerson Hadley as counsel for plaintiff in error.

The clerk will enter my appearance as counsel for the plaintiff in error.

EMERSON HADLEY.

(Endorsed:) Filed in U. S. Circuit Court of Appeals on Dec. 15, 1913.

19 Appearance of Mr. Philip J. Doherty, as counsel for defendant in error.

The clerk will enter my appearance as counsel for the defendant in error.

PHILIP J. DOHERTY,
Special Asst. U. S. Attorney.

(Endorsed:) Filed in U. S. Circuit Court of Appeals on Dec. 16, 1913.

Order of submission.

December term, 1913. Tuesday, December 16, 1913.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Emerson Hadley for plaintiff in error and concluded by Mr. Philip J. Doherty for defendant in error.

Thereupon this cause was submitted to the court on the transcript of record from said district court and the briefs of counsel filed herein.

20 *Opinion.*

United States Circuit Court of Appeals, Eighth Circuit.

No. 4015.—December term, A. D. 1913.

NORTHERN PACIFIC RAILWAY COMPANY, plaintiff in error,
vs.
UNITED STATES OF AMERICA, defendant in error.

In error to the District Court of the United States for the District of North Dakota.

Mr. Emerson Hadley (Mr. C. W. Bunn and Messrs. Watson & Young were with him on the brief), for plaintiff in error.

Mr. Philip J. Doherty, special assistant U. S. Attorney (Mr. Edward Engerud, U. S. Attorney, was with him on the brief), for defendant in error.

Before Sanborn and Hook, circuit judges, and Pope, district judge.

Syllabus.

1. Crimes—Hours of service—Report of excessive service—Omission or mistake in.

An omission by a common carrier from a periodical report of the instances of excessive service of its employees made and filed in
21 good faith within the time prescribed therefor by the Interstate Commerce Commission pursuant to the amendment of section 20 of the act to regulate commerce, 36 Stat., 556, of one or more instances that should have been included therein, or any mistake of law or fact made therein in good faith, does not subject the common carrier to liability for the penalties or forfeitures denounced by that amendment for a failure to file the periodical report.

2. Statutes—Construction—Natural meaning preferred to hidden signification.

The apparent and natural meaning of the terms of a statute is to be preferred to any curious recondite signification deduced by study, ingenuity, and strong desire.

3. Same—Reasonable interpretation preferred to unjust and oppressive one.

A reasonable sensible interpretation of a statute should be preferred to an irrational signification that renders the law unjust and oppressive.

4. Same—Penal statute creating new offense—Persons and acts denounced.

A penal statute which creates a new offense and prescribes the punishment for it must clearly state the persons and acts denounced.

An act or omission which is not clearly an offense by the expressed will of the legislative body before it is committed may not be made so after its commission by the introduction into the law of declarations, or by the expunging therefrom of words or terms by the judiciary.

Sanborn, circuit judge, delivered the opinion of the court.

The railway company complains of a judgment of $500.00
22 against it for five fines of $100.00 each for failing for five successive days to correct an unintentional omission of an instance of excessive service of some of its employees from its monthly report of such instances filed with the Interstate Commerce Commission on November 29, 1912.

The Interstate Commerce Commission under the authority of the amendment of section 20 of the act to regulate commerce of February 4, 1887, chap. 104, 24 Stat., 386, made June 18, 1910, and found in chap. 309, sec. 14, 36 Stat., 556 (U. S. Comp. Stat., supp., 1911, page 1305), made an order on June 28, 1911, that all carriers subject to the provisions of "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," commonly called the hours-of-service act, 34 Stat., 1415, should "report within thirty days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in such act," and it was for an innocent omission of one instance from one of these monthly reports that this action was brought. Section 20 of the act of 1887, as amended by the act of June 29, 1906, 34 Stat., chap. 3591, sec. 7, pages 584, 593, authorized the commission to require annual reports from each common carrier subject to the act of its capital stock issued, the amounts paid therefor, the manner of payment therefor, its dividends paid, its surplus fund, the number of its stockholders, its funded and floating debt, the cost and value of its property, franchises, and equipment, the number of its employees and the salaries paid each class, its accidents, earnings, receipts, expenditures, etc., and it empowered the commission to require from each carrier specific answers to all questions upon which the commis-

sion might need information. A subsequent portion of this section 20, as amended in 1910, 36 Stat., 556, read in this way:

"If any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such
23 party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission it shall be subject to the forfeitures last above provided."

This quotation contains the only definition of the offense and the only specification of the penalties involved in this case. The offense is the failure "to make and file any such periodical * * * report within the time fixed by the commission," and the penalties are "the forfeitures last above provided." The forfeitures last above provided are prescribed for the failure of the carrier to file in due time its annual report which is required to set forth the vast mass of statistics and information required by the first portion of section 20, and for its failure to answer any specific question propounded by the commission within the time lawfully prescribed for the answer, and these penalties are the forfeiture of $100.00 for each and every day the carrier shall continue to be in default with respect to the annual report or the answers to the questions. The judgment in this case was rendered upon the pleadings and the material facts which they disclose are these: On October 29, 1911, an engineer, fireman, conductor, and two brakemen were called at 7.30 p. m. to take out a wrecker train at 8.10 p. m. from Jamestown, North Dakota, but it subsequently proved unnecessary to send that train out, and at 8.10 p. m. these employees were released from duty and notified that they would not be required for service until 10.35 p. m., and they rendered no service prior to that, except that the engineer and fireman kept the fire in their engine alive. At 10.35 p. m. they took a train east from Jamestown to Mapleton, where they arrived and where their service ceased at 1.15 p. m. October 30, 1911, so that unless they were in service between 8.10 p. m. and 10.35
24 p. m. October 29, 1911, their service was only fourteen hours and forty minutes and they rendered no excess service. If,

on the other hand, they were on duty between 8.10 p. m. and 10.35 p. m. October 29, their continuous service exceeded the sixteen hours limited by the hours-of-service act. It was conceded at the hearing in this court that the United States had sued the company, had recovered, and the company had paid the penalty prescribed by the hours-of-service act for this excessive service, and that by that judgment the fact that these employees were on duty from 8.10 p. m. October 29 until 1.15 p. m. October 30 was rendered res adjudicata. On November 29, 1911, the railway company filed its monthly report, under oath, of the instances of hours of service of its employees on duty during October for longer periods than those named in the hours-of-service act in the form and in accordance with the regulations of the Interstate Commerce Commission, and many such instances were disclosed therein. By reason of the abandonment of the wrecker train the company did not consider or underestand when it made and filed this report that it was required to report the instance which has been described, and its report was intended in good faith to be true and complete and to embrace any and all instances where its employees were kept in service longer during the month of October than the times limited by the act of Congress, but it did not specify the instance of excessive service on which this suit is founded. The result is that the case in brief is this:

The commision lawfully required the company to file within thirty days after the end of each month a monthly or periodical report of all instances of hours of service of its employees on duty for a longer period than that named in the hours-of-service act. The 20th section of the act to regulate commerce as amended fixed a penalty of $100.00 for each and every successive day of failure of the company to file such a periodical report. The company filed in good faith such a periodical report, under oath, within the time fixed, but unintentionally and by mistake omitted one instance of excessive service from its report which it should have included. Is such an omission a failure to file the periodical report which renders the company liable to the penalty of $100.00 for each successive day after the expiration of the thirty days within which the report is
25 required to be filed? The court below answered this question in the affirmative and in support of that conclusion counsel for the Government contend that the mistake of the company here was a mistake of law and not of fact, and for the purposes of this discussion and decision this contention may be admitted to be sound. They argue that the order of the commission required a monthly report of all instances of excessive service, that the filing of the report of all instances but one was a failure to file a report of all instances and therefore a failure to file the periodical report which created a liability to the penalties prescribed by the act. But it is not true that a carrier that in good faith files an incorrect or incomplete periodical report, under oath, in due time has failed to file any such periodical report. If it were such a carrier would be liable

to penalties for each of the instances of excessive service specified in such a filed report as much as for those omitted and such a result is too intolerable and oppressive to be seriously contemplated. Counsel cite and review the cases that treat of the constitutionality of the hours-of-service act, of its worthy purpose, of the authority of the commission to require the report, and of the duty of the courts to enforce the law (Baltimore & Ohio R. R. Co. v. Interstate Commerce Comm., 221 U. S., 612, 621; United States v. Yazoo & M. V. R. Co., 203 Fed., 159 (D. C.); United States v. Chicago, Milwaukee & Puget Sound Ry. Co., 195 Fed., 783), but they present no direct authority that the filing in good faith of an incomplete or incorrect report, affidavit, complaint, answer, or other such article required by law is a failure to file any such article which subjects the delinquent to a penalty denounced for such a failure. And there are many reasons why that proposition fails to commend itself to our judgment.

A reasonable, sensible meaning should be attributed to a statute in preference to one which is irrational and improbable. Madden v. Lancaster Co., 65 Fed. 188, 195, 12 C. C. A. 566, 573; Omaha Water Co. v. City of Omaha, 147 Fed. 1, 13, 77 C. C. A. 267, 279; Armour Packing Co. v. United States, 153 Fed. 1, 18, 21, 82 C. C. A. 135, 152, 155; Lafayette Co. v. Wenderly, 92 Fed. 313, 316, 34 C. C. A. 360, 363; Webber v. St. Paul City Ry. Co., 97 Fed. 140, 143, 38 C. C. A. 79, 82. The penalties denounced by section 20 of the act to regulate commerce as amended by the act of June 18, 1910,
26 36 Stat. 556, for the failure to file this monthly report are the same as those prescribed by the same section for the failure of a carrier to file its annual report. They are $100 for each and every day the carrier shall continue to be in default with respect thereto. The annual report requires such a vast amount of information, so many statistics and details that it is improbable, if not impossible, that any carrier could ever make such a report without some unintentional omission of information required and some mistakes in the information given. If the failure to file an annual report without such an omission and without any mistake or misinformation therein is such a failure to file an annual report as makes the carrier liable for the penalties it must be difficult, if not impossible, for any carrier to escape them, and it is incredible that the Congress intended to subject carriers to the forfeitures prescribed for the failure to file these annual reports on account of such inadvertent omissions or mistakes in them. If the Congress did not so intend in the case of the annual report it probably did not have that intention in the case of the monthly report, for the same penalties are prescribed in the same section for the failure to file each.

The penalties are $100.00 for each and every day the default in filing the report continues. If these penalties are incurred for failure to file the report, as the statute reads, the act of Congress is neither unreasonable nor excessively drastic, for the carrier knows

or may readily ascertain whether or not it has filed its report in due time and hence it is easy for it to prevent any continuing default. But if these penalties are incurred by its innocent omission from or mistake in the specifications of excessive service in the report filed by the carrier the statute becomes irrational and unduly oppressive, for the carrier is not aware and will not have notice of such unintentional omissions and mistakes when it makes its report, and yet for each omission or mistake it may incur a penalty of $100.00 every day for at least three hundred and sixty days, or $36,000.00, and thus an honest error of law or mistake of fact in making the report may easily entail a penalty of $36,000.00, while a wilful delay to file the report immediately and under oath would be limited to $100.00 or $200.00. Indeed, if the construction claimed by counsel for the Government is the true interpretation of this act the United States could recover of the defendant for its
27 omission in this case $100.00 for each day between November 30, 1911, and September 14, 1912, when the complaint in this case was filed, or $28,900.00. Such an interpretation of this act of Congress renders it so unjust and oppressive that we can not think that Congress intended that it should receive such a construction.

Again, this amendment of June 18, 1910, 36 Stat., 556, created and penalized a new offense, the failure of a carrier to file its monthly or periodical report of instances of the excessive service of its employees within the time fixed by the commission. A statute which creates a new offense and prescribes its punishment must state clearly the persons and acts denounced. An act which was not an offense by the expressed will of the legislative body before it was done may not be justly or lawfully made so by construction after it is committed, either by the introduction into the statute of declarations or the expunging therefrom of words or terms by the judiciary. Congress might have modified this clause which describes and limits the offense, to wit: "If any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission it shall be subject to the forfeitures last above provided," so that it would have read: "And if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, or shall omit to specify in any such report it files any instance of excessive service required to be reported therein, it shall be subject to the forfeitures last above provided." But it did not do so, the legal presumption is that it did not intend to do so, and it is not the province of the judiciary thus to amend the statute and by such amendment to create and punish another class of offenses. Nothing comes to mind more appropriate to the determination of the question here at issue than the familiar words of Chief Justice Marshall: "Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one, indeed, which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the

words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute is
28 within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity or of kindred character with those which are enumerated." United States v. Wiltberger, 18 U. S. 76, 95; United States v. Ninety-nine Diamonds, 139 Fed. 961, 964, 72 C. C. A. 9, 12; First National Bank of Anamoose v. United States, 206 Fed. 374, 376, . . . C. C. A. . . . .

The natural apparent meaning of the terms of a statute should always be preferred to any recondite signification discovered only by study, ingenuity, and strong desire. United States v. Ninety-Nine Diamonds, 139 Fed. 961, 964, 72 C. C. A. 9, 12; First Nat. Bank of Anamoose v. United States, 206 Fed. 374, 376, 124 C. C. A. 256. The natural apparent meaning of this statute is that Congress relied, and intended to rely, upon the oath to the periodical report and the penalty for perjury in wilfully falsely making it, as security for the completeness and truth of the report, and upon the penalty for the failure to file it as security for its filing alone. The terms of the statute are plain and they fail to declare the innocent omission of an instance of excessive service from or the mistake in a report an offense punishable by the fines it specifies. Reason and authority alike teach that the act of omitting from a periodical report filed in good faith an instance or item which should have been included therein, or a mistake in the information which the report contains is not the offense of failing to file any such periodical report. United States v. Four Hundred Twenty Dollars, 162 Fed. 803, 804; Bonnell v. Griswold, 80 N. Y. 128, 132, 133; Pier v. Hanmore, 86 N. Y. 95, 100; Matthews v. Patterson, 26 Pac. 812, 813; Whitney Arms Co. v. Barlow, 63 N. Y. 62.

And the conclusion is that an omission by a carrier from the periodical report of the instances of excessive service of its employees made and filed in good faith within the time prescribed therefor by the Interstate Commerce Commission under the amendment of section 20 of the act to regulate commerce, 36 Stat. 556, of one or more instances that should have been included therein, or any mistake of law or fact therein made in good faith, does not subject the carrier to liability for the penalties or forfeitures denounced by that amend-
ment for the failure to file a periodical report. The judgment
29 below must, therefore, be reversed and the case must be remanded to the court below for further proceedings not inconsistent with the views expressed in this opinion, and

It is so ordered.

Filed March, 21, 1914.

30 *Judgment.*

United States Circuit Court of Appeals, Eighth Circuit.

December term, 1913. Saturday, March 21, 1914.

NORTHERN PACIFIC RAILWAY COMPANY, plaintiff in error,
No. 4015. *vs.*
UNITED STATES OF AMERICA.

In error to the District Court of the United States for the District of North Dakota.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of North Dakota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby reversed without cost to either party in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said district court with directions for further proceedings not inconsistent with the views expressed in the opinion of this court.

March 21, 1914.

31 *Clerk's certificate.*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of North Dakota, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, and full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein the Northern Pacific Railway Company is plaintiff in error and the United States of America is defendant in error, No. 4015, as full, true, and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the first day of June, A. D. 1914, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the judges of the District Court of the United States for the District of North Dakota.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this twenty-fourth day of July, A. D. 1914.

[SEAL.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

32 In the Supreme Court of the United States.

October term, 1914.

THE UNITED STATES, PETITIONER,
v.
NORTHERN PACIFIC RAILWAY COMPANY. } No. 624.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit to the writ of certiorari granted herein.

JNO. W. DAVIS,
Solicitor General.
C. W. BUNN,
EMERSON HADLEY,
WATSON & YOUNG,
Counsel for Respondent.

OCTOBER 28, 1914.

(Endorsed:) No. 4015. Northern Pacific Railway Company, plaintiff in error, vs. United States of America. Stipulation as to return to writ of certiorari from Supreme Court, U. S. Filed Nov. 4, 1914. John D. Jordan, clerk.

33 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America, to the honorable the judges of the United States Circuit Court of Appeals for the Eighth Circuit, greeting:

Being informed that there is now pending before you a suit in which Northern Pacific Railway Company is plaintiff in error and the United States of America is defendont in error, No. 4015, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the District of North Dakota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should

be certified by the said Circuit Court of Appeals and removed
34 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the twenty-seventh day of October, in the year of our Lord one thousand nine hundred and fourteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

35 *Return to writ.*

UNITED STATES OF AMERICA, *Eighth Circuit, ss:*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Northern Pacific Railway Company, plaintiff in error, vs. United States of America, No. 4015, is a full, true, and complete transcript of all the pleadings, proceedings, and record entries in said cause as mentioned in the certificates thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this seventh day of November, A. D. 1914.

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Indorsed:) File No. 24368. Supreme Court of the United States, No. 624. October term, 1914. The United States vs. Northern Pacific Railway Co. Writ of certiorari. Filed Nov. 4, 1914. John D. Jordan, clerk.

(Indorsed:) File No. 24368. Supreme Court U. S. October term, 1914. Term No. 624. The United States, petitioner, vs. Northern Pacific Railway Co. Writ of certiorari and return. Filed November 12, 1914.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PETITIONER,
v.
NORTHERN PACIFIC RAILWAY COMPANY. } No. ——.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF THEREON.

To the Supreme Court of the United States:

The Solicitor General, on behalf of the United States, prays for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Eighth Circuit in the above-entitled cause.

QUESTION PRESENTED.

The question presented is whether a carrier which is subject to the Hours-of-Service Act of March 4, 1907, 34 Stat. 1415, and which is required to report to the Interstate Commerce Commission within 30 days after the end of each month all instances where employees have been on duty longer than the statutory period, is liable to the penalty

prescribed for a failure to file such report where it has omitted from the report as filed certain instances of excessive service, under the belief, as alleged, that such instances did not come within the Hours-of-Service Act.

The Circuit Court of Appeals took the view that the railroad company under the circumstances described was not so liable.

THE FACTS.

The case was heard and determined in the District Court upon motion for judgment on the pleadings (R. 12). The undisputed facts are that certain employees of respondent were called at 8.10 p. m. on October 29, 1911, to move a wrecker train. It was ascertained, however, that this train would not be needed, and the crew were notified upon reporting for duty that their services would not be required until 10.35 p. m. of the same day. From 8.10 to 10.35 p. m. they did not render any service to respondent "save that they kept alive the fire in the engine during said period." At the latter hour, the crew again reported for duty and left on a special freight train which, on account of hot boxes, was delayed 65 minutes and did not reach its destination until 1.15 p. m. on October 30. The railroad company did not consider that these facts constituted excess service under the law, and consequently failed to include them in its monthly report to the Commission (R. 9–11).

The District Court rendered judgment in favor of the United States for $500 damages, being the sum of penalties of $100 each sued for by the United States for respondent's failure upon five successive days to report the transaction in question (R. 1–8, 12).

Section 20 of the Act to Regulate Commerce as amended June 18, 1910, 36 Stat. 539, 556, provides in part as follows:

> * * * if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission

so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided.

Acting under the authority conferred by this section the Commission, on June 28, 1911, issued the following order:

> *It is ordered,* That all carriers subject to the provisions of the Act entitled "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said Act have been on duty for a longer period than that provided in said Act (R. 6).

REASON FOR THE ALLOWANCE OF THE WRIT.

The present petition is preferred at the request of the Interstate Commerce Commission, and the question involved is believed by it to be of great importance in the enforcement of the Act to Regulate Commerce. By section 20 of that act the Commission is authorized to require various reports of carriers. If the decision in the instant case is followed, and any report rendered within the required time, whether true or false, complete or incomplete, is held to constitute a compliance with the section, there is little check upon the exercise of the discretion of carriers in this regard. At all

events, it is desirable that the question be authoritatively settled in order that the Commission may know its power in the premises.

BRIEF IN SUPPORT OF THE PETITION.

1. Since the amount in issue is less than $1,000, this case cannot be brought to this court by writ of error under section 241 of the Judicial Code. Under such circumstances, although the judgment of the Circuit Court of Appeals remanding the case to the District Court for further proceedings is not final, this court undoubtedly has power to issue the writ of certiorari.

Forsyth v. *Hammond,* 166 U. S. 506, 514–515.

St. Louis, K. C. & C. Ry. Co. v. *Wabash R. R. Co.,* 217 U. S. 247, 251.

2. The order of the Interstate Commerce Commission which was here violated was within the authority of that body, being authorized by section 4 of the Hours-of-Service Act and section 20 of the Act to Regulate Commerce as amended. *Balto. & Ohio R. R. Co.* v. *Interstate Com. Comm.,* 221 U. S. 612, 620.

3. The instance involved in this case is undoubtedly excessive service within the meaning of the Hours-of-Service Act. Indeed the respondent has already been prosecuted and paid the penalty therefor, which judgment is not and could not be complained of in the light of the decision of this court.

In *Missouri, K. & T. Ry. Co.* v. *United States,* 231 U. S. 112, it was contended that a delay occurring while the engine was sent off for water and repairs, during which time the men were waiting, doing nothing, should be deducted from the total period, as the men were not on duty during that time. Upon that point this court, through Mr. Justice Holmes, said (p. 119):

> * * * But they were under orders, liable to be called upon at any moment, and not at liberty to go away. They were none the less on duty when inactive. Their duty was to stand and wait.

Surely the employes engaged in the task of keeping alive the fire in the engine between 8.10 and 10.35 p. m. in the present case were as much "on duty" as those waiting for an engine.

For the purposes of the present case, it is immaterial whether respondent would be entitled to a deduction for the period of delay caused by hot boxes under the proviso of section 3 if prosecuted for violating the Hours-of-Service Act, since obviously the report required by the Commission is to include *all* cases of excessive service, whether with or without justification.

4. We therefore come to the principal question—whether respondent's failure to report the instance of excessive service in question was a violation of section 20 of the Interstate Commerce Act for which the United States can recover $100 a day.

In this connection the language of the Commission's order is worth noting. The carrier is required to " report within 30 days after the end of each month * * * *all instances* where employes * * * have been on duty for a longer period than that provided in said Act." This order would be fulfilled either by a single report containing all instances of excessive service or by a separate report for each such instance. It is not complied with, however, by a report containing all instances but one. In short, the thing required by the Commission is certain information and not merely a compliance with a certain monthly formality.

It follows that the carrier was in default with respect to its failure to make the report required by the Commission within the time fixed, and therefore incurred the penalty of $100 a day for such default provided by section 20.

Such has been the construction heretofore tacitly given to the section by the District Court in a suit by the United States to recover a penalty for a similar default. *United States* v. *Chicago, M. & P. S. Ry. Co.* (D. C. Wash.), 195 Fed. 783. See also, *United States* v. *Yazoo & M. V. R. Co.* (D. C. W. D. Tenn.), 203 Fed. 159.

While we have found no direct authority upon the question here presented, analogies are not wanting. In *Phile* v. *The Anna,* 1 Dall. 197, 205, under a statute providing that " every vessel or boat,

from which any goods, wares or merchandise shall be unladed, before due entry thereof at the office of the collector of the port * * * shall be forfeited," and that " the master of any ship or vessel shall exhibit to the collector a true manifest of the goods, wares and merchandise imported in such ship or vessel, and swear that there are no other on board, to the best of his knowledge and belief," it was held that the offense involving forfeiture of the vessel was committed by the delivery of a false manifest. The court said (p. 205):

> * * * if the master is obliged by law to deliver in a manifest, he does not comply, unless he exhibits a true and accurate one; and his committing perjury upon the occasion, so far from saving the vessel, must greatly increase the offence.

Again, in *134,901 Feet of Pine Lumber,* 4 Blatch. 182, under a similar statute, it was held that it was immaterial whether the master of the vessel presented a false manifest or none at all.

The Circuit Court of Appeals in the instant case relied largely on the hardship which would ensue as a consequence of the construction of section 20 for which we contend. But that is obviously a question for the consideration of Congress, and should not weigh against the clear language of the section. That language does not seem to us open to the construction placed upon it by the Circuit Court of Appeals. For the purposes of the section, a failure

to report any instance of excessive service is a failure to make a report required by the Commission; and it is immaterial whether or not that failure takes the form of an omission from a monthly report. Under any other interpretation, the statute inevitably gives the carrier a free hand in concealing violations of the Hours-of-Service Act, without any recourse for the Government except punishment of the officer who verifies the report under oath on the charge of perjury in case knowledge on his part of its falsity can be shown. We submit that Congress did not intend thus to nullify the investigatory power of the Commission under section 20, or that the Commission in requiring such reports is doing a vain thing.

5. The Circuit Court of Appeals placed much reliance on the circumstance that the failure to report was in good faith. We cannot see the materiality of this circumstance. It was assumed to be immaterial in *United States* v. *Chicago, M. & P. S. Ry. Co., supra.* It is not denied that the carrier knew the circumstances of the instance of excessive service in question; it is alleged, however, that it did not understand that the instance was in fact a violation of the statute, or that it was necessary that the same should be included in its report (R. 11). In other words, the carrier made a mistake of law; and no reason is seen for giving such a mistake any other or different effect in this than in other cases. This is not the kind of statutory

offense where evil intent is necessary; a mere intent to fail to do the thing required by the statute is enough. Cf. *Chicago, B. & Q. Ry. Co.* v. *United States,* 220 U. S. 559; *Armour Packing Co.* v. *United States,* 209 U. S. 56, 85.

It is therefore respectfully submitted that a writ of certiorari should issue as prayed.

JOHN W. DAVIS,
Solicitor General.

OCTOBER, 1914.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

THE UNITED STATES, PETITIONER,
v.
NORTHERN PACIFIC RAILWAY COMPANY. } No. 44.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

This is a civil proceeding, brought by the United States in the District Court of the United States for the District of North Dakota, to recover $500 from the Northern Pacific Railway Company for failure to file, for five successive days, with the Interstate Commerce Commission, a report of violations of the hours-of-service act (March 4, 1907; c. 2939, 34 Stat. 1415, 1416), as required by an order of the Commission issued June 28, 1911 (R. p. 2). The order was made under authority of section 20 of the Act to Regulate Commerce, as

amended (June 18, 1910; c. 309, 36 Stat. 539, 555, 556), and required the carrier to file within thirty days after the end of each month a report of *all* instances of excess service by its employees. The District Court rendered judgment for the Government (R. p. 11), but was reversed by the Circuit Court of Appeals for the Eighth Circuit (R. p. 17; 213 Fed. 162). Application for writ of certiorari was granted by this court, and the case is here for hearing upon the merits.

STATEMENT OF FACTS.

The case was heard in the District Court upon motion for judgment on the pleadings. The undisputed facts are as follows: Certain employees of respondent were called at 8.10 p. m. on October 29, 1911, to move a wrecker train. It was ascertained, however, that this train would not be needed, and the crew were notified upon reporting for duty that their services would not be required until 10.35 p. m. of the same day. From 8.10 p. m. to 10.35 p. m. they did not render any service to respondent "save that they kept alive the fire in the engine during said period." At the latter hour the crew again reported for duty and left on a special freight train, which, on account of hot boxes, was delayed 65 minutes and did not reach its destination until 1.15 p. m. on October 30. (R. p. 9.) The railroad company did not consider that these facts constituted excess service under the law, and consequently failed to include them in its monthly report to the commission. (R. p. 10.)

QUESTION PRESENTED.

Does failure to report certain instances of excess service, as required by an order of the Interstate Commerce Commission, constitute a violation of section 20 of the Act to Regulate Commerce, where such failure is due to a mistake of law?

ARGUMENT.

The act of March 4, 1907, the hours-of-service act (c. 2939, 34 Stat. 1415, 1416), provides that it shall be unlawful for any common carrier, subject to the act, to require or permit any employee actually engaged in or connected with the movement of any train " to be or remain on duty for a longer period than 16 consecutive hours, * * *."

Section 20 of the Act to Regulate Commerce, as amended by the act of June 18, 1910 (36 Stat. 539, 555, 556), reads, in part, as follows:

> * * * and if any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time specified, or within the time extended by the commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority, by gen-

> eral or special orders, to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided.

Under authority of the latter act the commission on June 28, 1911, made an order (Appendix A) requiring "all carriers subject to the provisions of the act entitled 'An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon,' approved March 4, 1907, to report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act."

It is admitted that the employees mentioned in the complaint were on duty more than 16 hours, and that such excess service was a violation of the hours-of-service act, which should have been included in the report called for by the commission's order. Furthermore, there is no question in this

case as to the power of Congress to authorize the commission to make such an order, that having been settled by this court in the case of *Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Commission,* 221 U .S. 612.

Respondent does not deny that it was fully cognizant of all the circumstances at the time it filed the report. The only defense made is that the failure to comply with the order to report *all* instances of excess service was unintentional and due to the fact that it did not understand that the excess service in question constituted a violation of the hours-of-service act or that it was necessary to include same in its report (R. p. 10). In other words, it was not ignorance of the fact that the employees had remained on duty more than 16 consecutive hours, but an erroneous construction of the law that caused the violation of the commission's order. This defense will not avail. *Ignorantia legis neminem excusat.* (*Armour Packing Co.* v. *United States,* 209 U. S. 56, 85, 86.)

Apparently conceding that ignorance of the law does not excuse it, respondent argues that while it has not literally obeyed the commission's order, it has still not violated the statute, because the report filed complied with the statute.

The sole question presented, therefore, is whether section 20 of the Act to Regulate Commerce is satisfied by the filing, in good faith, of a report false because incomplete.

We have seen that this section provides that "the commission shall also have authority by general or special orders to require said carriers, or any of them, to file * * * periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; * * * and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided." The forfeitures referred to were "one hundred dollars for each and every day it shall continue to be in default with respect thereto."

The particular matter inquired about was *all* instances of service exceeding 16 consecutive hours. The information sought was within the power delegated to the commission and necessary to the efficient administration of the law.

> To enable the commission properly to perform its duty to enforce the law, it is necessary that it should have full information as to the hours of service exacted of the employees who are subject to the provisions of the statute, and the requirements to which we have referred are appropriate for that purpose and are comprehended within the power of the commission. (*Baltimore & Ohio R. R.* v. *Interstate Commerce Commission,* 221 U. S. 612, 622.)

The commission was not only entitled to a report but a true report, and section 20 reasonably construed requires such a report.

> While, as pointed out on the former writ of error, the act did not expressly require that these reports "should contain a true statement of the condition of the association," yet "by necessary implication, such is the character of the statement required to be made, and by the like implication the making and publishing of a false report is prohibited." 206 U. S. p. 177. (*Jones National Bank* v. *Yates,* 240 U. S. 541, 554.)

Where there has been an instance of excess service it is the duty of the carrier to report it, and if, through mistake of law, it fails to do so, it must, as in other cases, suffer the consequences of reliance upon its own judgment.

This should not be deemed a hardship, because of the easy means of escape from such consequences by reporting doubtful cases to the commission, leaving their determination to the proper tribunal.

It is much better to require the carrier to decide nice questions of law at its peril than to destroy the effective administration of a great remedial law.

> As we have said, if the commission is to be informed of the business of the corporation, so far as its bookkeeping and reports are concerned, it must have full knowledge and full disclosures thereof, in order that it may ascertain whether forbidden practices and discriminations are concealed, even unintentionally, * * *. (*Interstate Commerce*

Commission v. *Goodrich Transit Co.*, 224 U. S. 194, 215–216.)

See also *United States* v. *Yazoo & Mississippi Valley Railroad Co.*, 203 Fed. 159.

The Government does not claim that a separate penalty is incurred for failure to report each instance of excess service, but that the violation of the statute consists of the failure to file a true report, the penalty being the same whether there be one or more instances of excess service. So construed, the penalties claimed are not as large as others which this court has allowed to stand. (*Wadley Southern Railway Co.* v. *Georgia*, 235 U. S. 651; *Waters-Pierce Oil Co.* v. *Texas*, 106 S. W. 918, 930, affirmed in 212 U. S. 86.) The act is remedial and should be liberally construed. Its primary object is to promote the public welfare by securing the safety of employees and travelers. (*Johnson* v. *Southern Pacific*, 196 U. S. 1; *United States* v. *C., B. & Q. R. R. Co.*, 237 U. S. 410, 413; *United States* v. *Erie Railroad Co.*, 237 U. S. 402.)

The alleged harshness of the law "is no concern of the courts." (*St. Louis, Iron Mountain & So. Ry.* v. *Taylor*, 210 U. S. 281, 295.)

CONCLUSION.

The decision of the Circuit Court of Appeals should be reversed and that of the District Court should be affirmed. (*Delk* v. *St. Louis & San Francisco Railroad Co.*, 220 U. S. 580.)

Respectfully submitted.

E. MARVIN UNDERWOOD,
Assistant Attorney General.

OCTOBER, 1916.

APPENDIX A.

INTERSTATE COMMERCE COMMISSION.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 28th day of June, A. D., 1911.

Present: Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

IN THE MATTER OF THE METHOD AND FORM OF MONTHLY REPORTS OF HOURS OF SERVICE OF EMPLOYEES ON RAILROADS SUBJECT TO THE ACT OF MARCH 4, 1907.

The method and form of monthly reports of hours of service of employees upon railroads subject to the act of March 4, 1907, having been considered by the commission:

It is ordered, That all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act.

It is further ordered, That the accompanying forms entitled "Interstate Commerce Commission Hours of Service Report," and the method embodied in the instructions therein set forth, be, and the same are hereby, adopted and prescribed; and all common carriers subject to said act are hereby notified to use and follow the said prescribed forms and method in making monthly reports of hours of service of employees on duty for a longer period than that named in said act, commencing with and making the first report for the month of July, 1911.

And it is further ordered, That copies of said forms, together with a copy of this order, be forthwith served upon all common carriers subject to said act.

A true copy.

JUDSON C. CLEMENTS,
Chairman.

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Supreme Court of the United States.

OCTOBER TERM, 1915.

No. 244

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Respondent.

BRIEF ON BEHALF OF RESPONDENT.

EMERSON HADLEY,
Attorney for Respondent,
St. Paul, Minnesota.

CHARLES W. BUNN,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1915.

No. 247.

THE UNITED STATES OF AMERICA,

Petitioner,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,

Respondent.

STATEMENT OF FACTS.

This case is here on a writ of certiorari to the United States Circuit Court of Appeals of the Eighth Circuit to review a judgment of that court reversing a judgment of the United States District Court of North Dakota. This judgment of the District Court was in favor of the United States and against the Northern Pacific Railway Company in an action brought to recover penalties under Section 20 of the Act to Regulate Commerce as amended in 1910 (36 Stat. 556).

Prior to 1910 Section 20 provided that the Commission might require each carrier subject to the Act to file an annual report, calling for a large amount of statistical

and detailed information concerning the properties of the company and its business operations and provided:

> "If any carrier shall fail to make and file said annual reports within the time above specified or within the time extended by the Commission for making and filing the same, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default in respect thereto."

In 1910 the following provision was added:

> "The Commission shall also have authority by general or special orders to require said carriers to file both periodical and special reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or keep itself informed or which it is required to enforce and such periodical or special reports shall be under oath whenever the Commission so requires, and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission it shall be subject to the forfeitures last above provided."

The Hours of Service Act (34 Stat. 1416) provides:

> "It shall be unlawful for any common carrier subject to the Act to require or permit any employe actually engaged in or connected with the movement of any train to be or remain on duty for a longer period than sixteen consecutive hours."

It is provided however that the provisions of the act shall not apply in any case of casualty or unavoidable accident or the act of God, nor to crews of wrecking or relief trains. It is made the duty of the Interstate Commerce Commission to enforce this act.

The Commission on June 28, 1911, made a general order in the following form:

> "It is ordered that all carriers subject to the provisions of the Act entitled 'An act to promote the safety of employes and travellers upon railroads by limiting the hours of service of employes thereon,' approved March 4, 1907, report within thirty days after the end of each month under oath all instances where employes subject to said Act have been on duty for a longer period than that provided in said Act." (Record, p. 2.)

The first cause of action in the complaint charged that the defendant railway company failed on the 1st day of December, 1911, to make and file with the Interstate Commerce Commission a report containing all the instances where its employes were on duty during the month of October, 1911, for a longer period than provided in the act, and further alleged that on October 30, 1911, the defendant allowed a certain train crew to be on duty more than sixteen hours and had failed to make a report thereof. (Record, p. 2.)

The second, third, fourth and fifth causes of action were similar to the first except they charged failure to file such report respectively on the 2nd, 3rd, 4th and 5th days of December, 1911.

The defendant interposed its answer to the complaint which must be taken as true, as the judgment rendered was given on the admitted facts in the pleadings.

The defendant answered that on the 29th day of November, 1911, and within the prescribed thirty days it did make and file with the Interstate Commerce Commission a report in writing of all instances where its employes were employed more than the statutory period during the month of October, 1911; that said report was made under oath in the form and in accordance with the

regulations of the Interstate Commerce Commission. (Record, p. 10.)

The answer admitted that on October 29th, 1911, a train crew, consisting of an engineer, fireman, conductor and two brakemen, were called to go out on a wrecking train at 8:10 p. m. and alleges that at 8:10 p. m. it was found that it was not necessary for the wrecking train to go out, and the train crew were notified that they would not be required for duty until 10:35 p. m. of the same day; that none of the crew did any work between 8:10 and 10:35 p. m. except the engineer and fireman did keep the fire alive on the engine; that the crew handled the train between Jamestown and Mapleton and owing to certain delays did not arrive at Mapleton and were on duty until 1:15 p. m. October 30, 1911, at which time the crew were released from duty. If the time the crew were waiting to go out—from 8:10 p. m. to 10:35 p. m.,—is included they were on duty more than sixteen hours; if that time is not included they were on duty less than sixteen hours. (Record, p. 9.)

The answer admits that these instances of over service were not included in the report filed November 29, 1911, and alleges the omission thereof was through inadvertence and by mistake and was due to the fact that this defendant did not consider or understand that the instances were in fact violations of the statute or that it was necessary or required that the same should be included in said report and alleges that said report submitted by it and filed with the Interstate Commerce Commission was intended to be full, true, correct and complete in every particular and to embrace any and all instances where employes of this defendant had been kept in its service for

more than the statutory hours of service. (Record, p. 10.)

The District Court rendered judgment against the railway company for a penalty of one hundred dollars a day for five days or a total of five hundred dollars and costs (Record, page 11).

A writ of error was taken to the Circuit Court of Appeals of the Eighth Circuit and that court reversed the judgment of the District Court for the reason that on the admitted facts there was no failure to file a report of the instances of excessive service of its employes for the month of October, 1911, that the filing of a report that was merely inaccurate, although in good faith intended to be accurate, was not a failure to file the report (See opinion, Record, pages 17-23, and judgment, page 24).

We wish to call attention to an error in the date of filing the report as alleged in the amended answer in the record. The date should be Nov. 29, *1911*, instead of Nov. 29, *1912*. This same error seems to have been carried into the opinion of Judge Sanborn in one place. All of the matters referred to occurred in the year *1911*.

ARGUMENT.

I.

THE QUESTION TO BE DETERMINED IS THIS: IS THE FILING OF A REPORT THAT IS NOT IN ALL RESPECTS AN ACCURATE ONE, ALTHOUGH INTENDED TO BE ACCURATE, A FAILURE TO FILE THE REPORT REQUIRED BY THE ORDER OF THE COMMISSION SO AS TO MAKE THE COMPANY LIABLE TO THE PENALTY OF ONE HUNDRED DOLLARS A DAY SO LONG AS IT SHALL CONTINUE IN DEFAULT?

The intention of Congress in respect to this must be arrived at by an examination of the provisions of Section 20 of the Act to Regulate Commerce as amended, which prescribes the penalties sought to be enforced in this case.

Prior to the amendment of 1910 this section provided as follows:

> "The Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act. * * * Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for the same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floated debts and the interest paid thereon, the cost and value of the carriers' property, franchises and equipments; the number of employes and the salaries paid each class, the accidents to passengers, employes and other persons and the causes thereof, the amounts expended for improvements each year, how expended and the character of such improvements, the earnings and receipts from each branch of business and from all sources, the operating and other expenses; the balances of profit and loss,

and a complete exhibit of the financial operations of the carrier each year including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights or agreements, arrangements or contracts affecting the same as the Commission may require.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year and shall be made out under oath and filed with the Commission at its office in Washington on or before the thirtieth day of September then next following unless additional time be granted in any case by the Commission and if any carrier * * * subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified * * * such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto." (34 Stat. 593.)

By the Act of June 18, 1910, this provision was amended by adding thereto as follows:

"The Commission shall also have authority by general or special orders to require said carriers or any of them to file monthly reports of earnings and expenses and to file periodical or special or both periodical and special reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce, and such periodical or special reports shall be under oath whenever the Commission so requires, and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission it shall be subject to the forfeitures last above provided." (36 Stat. 556.)

Referring first to the annual report required by this section: The statute provides:

> "If any carrier subject to the provisions of the Act shall fail to make and file said annual reports within the time above specified * * * it shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto."

The penalty of one hundred dollars per day is evidently intended to secure promptness in making and filing the report. It is the failure to make and file the report at a specified time that is denounced and that is what the penalty refers to and not a failure to make and file a report that is in all respects accurate and complete.

It is only by giving the language used a strained and unnatural meaning and extending its scope by argument that it is possible to interpret this language to mean that the only report that complies with the statute is one that is true and accurate and if an inaccurate report is made and filed it is not the report required and therefore there is a failure to file the report required by the statute.

The application of the interpretation of the statute claimed by the government to provisions referring to the annual reports make it clear that Congress could not have intended the statute should be so construed.

The quotation from the statute above shows the enormous mass of detailed information that must be incorporated in each annual report. In case of any large railroad company this information must necessarily be gathered together by a considerable number of officers and employes of the company and it is almost an impossibility that such a report shall be complete and accurate in every respect and it is incomprehensible that Congress could have intended that an unintentional misstatement or omission in such a report would render the company

liable to a penalty of one hundred dollars a day until it was discovered and corrected. But such is the logical conclusion of the interpretation placed on the statute by the government. There is no ground for a distinction to be drawn between an annual report and a periodical report, both called for by the same statute. If the making and filing of a periodical report that is not complete and accurate is a failure to file the report, so the making and filing an annual report that is not complete and accurate is a failure to file that report.

The United States Circuit Courts of Appeals of the Seventh, Eighth and Ninth Circuits have examined the statute in question and are unanimous in the opinion that the penalty of one hundred dollars a day is not incurred where a carrier subject to the act in good faith files its monthly report as required by the order of the Commission and by mistake the report is inaccurate in some particulars, that is to say, that the filing of an inaccurate or incomplete report is not a failure to file the report.

Northern Pacific Ry. Co. v. U. S., 213 Fed. 162 (C. C. A., 8th Circuit).

O-W. R. & N. R. Co. v. U. S., 222 Fed. 887 (C. C. A., 9th Circuit).

Elgin Joliet & Eastern Ry. Co. v. U. S., 227 Fed. 411 (C. C. A., 7th Circuit).

(These three opinions are printed in full in the Appendix.)

Questions analogous to the one at bar have arisen in states which penalized trustees and directors of private corporations for failure to make and file reports containing certain information as to the corporation's affairs.

By Section 12, Chapter 40, Laws of 1848, New York, it was provided that certain corporations

> "shall annually within twenty days after the 1st day of January make a report * * * which shall state the amount of capital, and of the proportion actually paid in, and the amount of its existing debts, which reports shall be signed by the president and a majority of its trustees and shall be verified by the oath of the president or secretary of said corporation, * * * and if any of said companies shall fail so to do, all of the trustees of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted, before such report shall be made."

The Court of Appeals, construing this statute in Bonnell v. Griswold, 80 N. Y. 128, found that a report which in form at least complied with the statute was in fact filed, but was false in a material particular. It was claimed a *false* report was *no* report and did not meet the demands of the statute. The Court said the defendant could not be held for liability of the company's debt because it was not so declared by the statute. It held in express language that the

> "statutory liability imposed by Section 12 does not attach if a report is made in terms complying with the statute, *although some of the representations be untrue.*"

See also

Pier v. Hanmore, 86 N. Y. 95.

Matthews v. Patterson, 26 Pac. 812-813, 16 Colo. 215.

Whitney Arms Co. v. Barlow, 68 N. Y. 35.

An act of Congress provided that a master of any vessel bringing aliens into the United States, who shall fail to deliver to the immigration officer at the point of arrival

lists or manifests of all aliens on board as required by Sections 12 and 13 and containing the information therein specified, "shall pay to the collector of customs at the port of arrival the sum of ten dollars for each alien concerning whom the above information is not contained in any lists as aforesaid."

The master furnished the manifest, but the same was not correct in that the master, in answer to the question asked in the manifest concerning each of said aliens "By whom was passage paid?" said "By himself," which answer was not true.

It was claimed by the government that the penalty of ten dollars for each alien was incurred by filing this false manifest. The court held however that there was no failure to file the manifest and therefore the penalty prescribed for the failure to file the manifest had not been incurred.

The Court said:

> "No penalty is prescribed by the act for furnishing incorrect information. It is imposed for the failure to deliver lists or manifests with the information required, but not for delivering lists which might contain incorrect information. The act is, in its nature, penal, and, in order to render the master liable to the penalty imposed by the act, it must appear that he has neglected or omitted to do some act which the law made it his duty to perform."
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> "The law under consideration requires the master of a vessel bringing aliens into the United States to deliver to the immigration officers at the port of arrival lists or manifests of such aliens, said lists to contain certain information specified in the law, and it imposes a penalty for any neglect or omission to comply with the requirements of this law. If Congress had intended to impose a like penalty for any

incorrect or false information furnished in said lists or manifests, it seems it would have said so in the law. But it may be said that it is material, and was the intention of Congress to have correct information concerning the aliens in question; and it may be asked what assurance is there that the information contained in said lists will be correct and true in the absence of a penalty for giving incorrect or false information. While it may be true that it is material, and was the intent of the law to obtain correct information on the subjects inquired about, and we do not know the motive of Congress in omitting to prescribe a penalty for furnishing incorrect information, we may well infer that it was because it was considered that the verification of the lists by the signature and oath of the master would be a sufficient assurance that said lists would speak the truth. The oath required to the lists is that, 'according to the best of his knowledge and belief, the information in said lists or manifests concerning each of said aliens named therein is correct and true in every respect.' The violation of this oath by the master in stating matters of information in the lists which he knew to be incorrect and untrue, or which he did not believe to be true, might subject him to severer punishment than the imposition of the penalty provided by the act under consideration, and it seems to me would be a greater assurance, if assurance were necessary, that the information furnished was correct and true in every respect, or believed to be so."

United States v. Four Hundred and Twenty Dollars, 162 Fed. 803.

If Congress had intended that the penalty of one hundred dollars per day should apply in case of filing a report that was not true or inaccurate it would have been very easy to have so provided in the statute in language that was clear and definite. Apparently Congress considered that the accuracy of the reports were sufficiently assured by the other laws in force. The reports are required to

be under oath and any wilful misstatement therein would render the officer of the company making and swearing to the same liable to the penalties prescribed for perjury, namely, a fine of not more than two thousand dollars, and imprisonment of not more than five years (Crim. Code, Sec. 125, Compiled Stat. 1913, Sec. 10295), also to the penalties prescribed for a misdemeanor in Sec. 10 of the Act to Regulate Commerce as amended June 18, 1910 (36 Stat. 539, 549). See opinion of Judge *Mack* in *Elgin, Joliet & Eastern Ry. Co. v. U. S.*, supra.

II.

THE STATUTE UNDER CONSIDERATION IS A PENAL STATUTE CARRYING WITH IT SEVERE PENALTIES AND SHOULD THEREFORE BE CONSTRUED STRICTLY AND NOT ENLARGED BY ARGUMENT OR INFERENCE BEYOND THE PLAIN MEANING OF THE LANGUAGE USED.

As stated by Chief Justice Marshall in *United States v. Wiltberger*, 5 Wheat. 76:

> "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislative and not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment. * * * The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words there is no room for construction. The case must be a strong one indeed which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a stat-

ute its language must authorize us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute is within its provisions, so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of a kindred character with those which are enumerated."

III.

IF THERE IS ANY AMBIGUITY IN THE STATUTE UNDER CONSIDERATION THAT INTERPRETATION SHOULD BE GIVEN IT THAT WILL RESULT IN A REASONABLE MEANING RATHER THAN THE ONE THAT IS HARSH AND UNREASONABLE.

We think the plain meaning of the statute is that the penalty invoked in this case only applies to a failure to file a report as required and does not apply where an inaccurate or incomplete report has been duly filed. Three United States Circuit Courts of Appeals have expressed themselves of this opinion. On the other hand the government contends that the opposite construction is the correct one and its contention has apparently been sustained by trial judges in the three cases which have been reversed by the Circuit Courts of Appeals.

It may be claimed that this difference of opinion is such as to indicate that there is some ambiguity in the language of the statute. That being so there is room for the Court to consider the reasonableness of the law under the two different constructions.

It should be borne in mind that the purpose of the law requiring the carrier to file monthly reports of excessive service is not to protect the lives of passengers and employes of the Railway Company but merely to facilitate

the work of the Interstate Commerce Commission in discovering violations of the law and the penalty imposed is not for breach of the Hours of Service Statute. That statute itself contains provisions for impositions of penalties for violations thereof.

It was admitted in the Circuit Court of Appeals that the Railway Company in this case had been prosecuted, found guilty and had paid the penalties for violations of the Hours of Service Statute and this action is brought to enforce additional penalties for failing to report the same violations. (See opinion of Judge Sanborn, Fol. 24 of Record).

Under the construction of the statute claimed by the government, if a railroad company by inadvertence or by misinterpretation of the law should file an annual report that was incomplete although intended to be and supposed to be complete when filed and if the railroad company should fail to discover and correct the mistake at the end of a year it would be liable to penalties aggregating more than thirty-six thousand dollars.

In the case at bar the report in question was due on November 30th, 1911. This suit to recover penalties for failure to file the report at the specified time was commenced September 24, 1912, and there had elapsed 297 days since the report became due to be filed; consequently the government contends that the Railway Company had already incurred penalties aggregating $29,700, and the government might just as well have recovered that sum in this action and it is only by favor or grace of some officer of the department of justice that the suit in this case was brought for five hundred dollars instead of twenty-nine thousand seven hundred dollars.

ployees made and filed in good faith within the time prescribed therefor by the Interstate Commerce Commission pursuant to the amendment of section 20 of the act to regulate commerce, 36 Stat., 556, of one or more instances that should have been included therein, or any mistake of law or fact made therein in good faith, does not subject the common carrier to liability for the penalties or forfeitures denounced by that amendment for a failure to file the periodical report.

2. Statutes—Construction—Natural meaning preferred to hidden signification.

The apparent and natural meaning of the terms of a statute is to be preferred to any curious recondite signification deduced by study, ingenuity, and strong desire.

3. Same—Reasonable interpretation preferred to unjust and oppressive one.

A reasonable sensible interpretation of a statute should be preferred to an irrational signification that renders the law unjust and oppressive.

4. Same—Penal statute creating new offense—Persons and acts denounced.

A penal statute which creates a new offense and prescribes the punishment for it must clearly state the persons and acts denounced.

An act or omission which is not clearly an offense by the expressed will of the legislative body before it is committed may not be made so after its commission by the introduction into the law of declarations, or by the expunging therefrom of words or terms by the judiciary.

Sanborn, circuit judge, delivered the opinion of the court.

The railway company complains of a judgment of $500.00 against it for five fines of $100 each for failing for five successive days to correct an unintentional omission of an instance of excessive service of some of its employees from its monthly report of such instances filed with the Interstate Commerce Commission on November 29, 1912.

The Interstate Commerce Commission under the authority of the amendment of section 20 of the act to regulate commerce of February 4, 1887, chap. 104, 24 Stat., 386, made June 18, 1910, and found in chap. 309, sec. 14, 36 Stat., 556 (U. S. Comp. Stat., supp., 1911, page 1305), made an order on June 28, 1911, that all carriers subject to the provisions of "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," commonly called the hours-of-service act, 34 Stat., 1415, should "report within thirty days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in such act," and it was for an innocent omission of one instance from one of these monthly reports that this action was brought. Section 20 of the act of 1887, as amended by the act of June 29, 1906, 34 Stat., chap. 3591, sec. 7, pages 584, 593, authorized the commission to require annual reports from each common carrier subject to the act of its capital stock issued, the amounts paid therefor, the manner of payment therefor, its dividends paid, its surplus fund, the number of its stockholders, its funded and floating debt, the cost and value of its property, franchises, and equipment, the number of its employees and the salaries paid each class, its accidents, earnings, re-

ceipts, expenditures, etc., and it empowered the commission to require from each carrier specific answers to all questions upon which the commission might need information. A subsequent portion of this section 20, as amended in 1910, 36 Stat., 556, read in this way:

> "If any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission it shall be subject to the forfeitures last above provided."

This quotation contains the only definition of the offense and the only specification of the penalties involved in this case. The offense is the failure "to make and file any such periodical * * * report within the time fixed by the commission," and the penalties are "the forfeitures last above provided." The forfeitures last above provided are prescribed for the failure of the carrier to file in due time its annual report which is required to

set forth the vast mass of statistics and information required by the first portion of section 20, and for its failure to answer any specific question propounded by the commission within the time lawfully prescribed for the answer, and these penalties are the forfeiture of $100.00 for each and every day the carrier shall continue to be in default with respect to the annual report or the answers to the questions. The judgment in this case was rendered upon the pleadings and the material facts which they disclose are these: On October 29, 1911, an engineer, fireman, conductor, and two brakemen were called at 7.30 p. m. to take out a wrecker train at 8.10 p. m. from Jamestown, North Dakota, but it subsequently proved unnecessary to send that train out, and at 8.10 p. m. these employees were released from duty and notified that they would not be required for service until 10.35 p. m., and they rendered no service prior to that, except that the engineer and fireman kept the fire in their engine alive. At 10.35 p. m. they took a train east from Jamestown to Mapleton, where they arrived and where their service ceased at 1.15 p. m. October 30, 1911, so that unless they were in service between 8.10 p. m. and 10.35 p. m. October 29, 1911, their service was only fourteen hours and forty minutes and they rendered no excess service. If, on the other hand, they were on duty between 8.10 p. m. and 10.35 p. m. October 29, their continuous service exceeded the sixteen hours limited by the hours-of-service act. It was conceded at the hearing in this court that the United States had sued the company, had recovered, and the company had paid the penalty prescribed by the hours-of-service act for this excessive service, and that by that judgment the fact that these employees were on

duty from 8.10 p. m. October 29 until 1.15 p. m. October 30 was rendered res adjudicata. On November 29, 1911, the railway company filed its monthly report, under oath, of the instances of hours of service of its employees on duty during October for longer periods than those named in the hours-of-service act in the form and in accordance with the regulations of the Interstate Commerce Commission, and many such instances were disclosed therein. By reason of the abandonment of the wrecker train the company did not consider or understand when it made and filed this report that it was required to report the instance which has been described, and its report was intended in good faith to be true and complete and to embrace any and all instances where its employees were kept in service longer during the month of October than the times limited by the act of Congress, but it did not specify the instance of excessive service on which this suit is founded. The result is that the case in brief is this:

The commission lawfully required the company to file within thirty days after the end of each month a monthly or periodical report of all instances of hours of service of its employees on duty for a longer period than that named in the hours-of-service act. The 20th section of the act to regulate commerce as amended fixed a penalty of $100.00 for each and every successive day of failure of the company to file such a periodical report. The company filed in good faith such a periodical report, under oath, within the time fixed, but unintentionally and by mistake omitted one instance of excessive service from its report which it should have included. Is such an omission a failure to file the periodical report which renders the company liable to the penalty of $100.00 for each

successive day after the expiration of the thirty days within which the report is required to be filed? The court below answered this question in the affirmative and in support of that conclusion counsel for the Government contend that the mistake of the company here was a mistake of law and not of fact, and for the purposes of this discussion and decision this contention may be admitted to be sound. They argue that the order of the commission required a monthly report of all instances of excessive service, that the filing of the report of all instances but one was a failure to file a report of all instances and therefore a failure to file the periodical report which created a liability to the penalties prescribed by the act. But it is not true that a carrier that in good faith files an incorrect or incomplete periodical report, under oath, in due time has failed to file any such periodical report. If it were such a carrier would be liable to penalties for each of the instances of excessive service specified in such a filed report as much as for those omitted and such a result is too intolerable and oppressive to be seriously contemplated. Counsel cite and review the cases that treat of the constitutionality of the hours-of-service act, of its worthy purpose, of the authority of the commission to require the report, and of the duty of the courts to enforce the law (Baltimore & Ohio R. R. Co. v. Interstate Commerce Comm., 221 U. S., 612, 621; United States v. Yazoo & M. V. R. Co., 203 Fed., 159 (D. C.); United States v. Chicago, Milwaukee & Puget Sound Ry. Co., 195 Fed. 783), but they present no direct authority that the filing in good faith of an incomplete or incorrect report, affidavit, complaint, answer, or other such article required by law is a failure to file any such article which subjects

the delinquent to a penalty denounced for such a failure. And there are many reasons why that proposition fails to commend itself to our judgment.

A reasonable, sensible meaning should be attributed to a statute in preference to one which is irrational and improbable. Madden v. Lancaster Co., 65 Fed. 188, 195, 12 C. C. A. 566, 573; Omaha Water Co. v. City of Omaha, 147 Fed. 1, 13, 77 C. C. A. 267, 279; Armour Packing Co. v. United States, 153 Fed. 1, 18, 21, 82 C. C. A. 135, 152, 155; Lafayette Co. v. Wonderly, 92 Fed. 313, 316, 34 C. C. A. 360, 363; Webber v. St. Paul City Ry. Co., 97 Fed. 140, 143, 38 C. C. A. 79, 82. The penalties denounced by section 20 of the act to regulate commerce as amended by the act of June 18, 1910, 36 Stat. 556, for the failure to file this monthly report are the same as those prescribed by the same section for the failure of a carrier to file its annual report. They are $100 for each and every day the carrier shall continue to be in default with respect thereto. The annual report requires such a vast amount of information, so many statistics and details that it is improbable, if not impossible, that any carrier could ever make such a report without some unintentional omission of information required and some mistakes in the information given. If the failure to file an annual report without such an omission and without any mistake or misinformation therein is such a failure to file an annual report as makes the carrier liable for the penalties it must be difficult, if not impossible, for any carrier to escape them, and it is incredible that the Congress intended to subject carriers to the forfeitures prescribed for the failure to file these annual reports on account of such inadvertent omissions or mistakes in them. If the Congress

did not so intend in the case of the annual report it probably did not have that intention in the case of the monthly report, for the same penalties are prescribed in the same section for the failure to file each.

The penalties are $100.00 for each and every day the default in filing the report continues. If these penalties are incurred for failure to file the report, as the statute reads, the act of Congress is neither unreasonable nor excessively drastic, for the carrier knows or may readily ascertain whether or not it has filed its report in due time and hence it is easy for it to prevent any continuing default. But if these penalties are incurred by its innocent omission from or mistake in the specifications of excessive service in the report filed by the carrier the statute becomes irrational and unduly oppressive, for the carrier is not aware and will not have notice of such unintentional omissions and mistakes when it makes its report, and yet for each omission or mistake it may incur a penalty of $100.00 every day for at least three hundred and sixty days, or $36,000.00, and thus an honest error of law or mistake of fact in making the report may easily entail a penalty of $36,000.00, while a wilful delay to file the report immediately and under oath would be limited to $100.00 or $200.00. Indeed, if the construction claimed by counsel for the Government is the true interpretation of this act the United States could recover of the defendant for its omission in this case $100.00 for each day between November 30, 1911, and September 14, 1912, when the complaint in this case was filed, or $28,900.00. Such an interpretation of this act of Congress renders it so unjust and oppressive that we can not think that Congress intended that it should receive such a construction.

Again, this amendment of June 18, 1910, 36 Stat., 556, created and penalized a new offense, the failure of a carrier to file its monthly or periodical report of instances of the excessive service of its employees within the time fixed by the commission. A statute which creates a new offense and prescribes its punishment must state clearly the persons and acts denounced. An act which was not an offense by the expressed will of the legislative body before it was done may not be justly or lawfully made so by construction after it is committed, either by the introduction into the statute of declarations or the expunging therefrom of words or terms by the judiciary. Congress might have modified this clause which describes and limits the offense, to wit: "If any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission it shall be subject to the forfeitures last above provided" so that it would have read: "And if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission or shall omit to specify in any such report it files any instance of excessive service required to be reported therein, it shall be subject to the forfeitures last above provided." But it did not do so, the legal presumption is that it did not intend to do so, and it is not the province of the judiciary thus to amend the statute and by such amendment to create and punish another class of offenses. Nothing comes to mind more appropriate to the determination of the question here at issue than the familiar words of Chief Justice Marshall:

> "Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one, indeed, which would justify a court in departing from the plain meaning of words, especially

in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity or of kindred character with those which are enumerated."

United States v. Wiltberger, 18 U. S. 76, 95;
United States v. Ninety-nine Diamonds, 139 Fed. 961, 964, 72 C. C. A. 9, 12;
First National Bank of Anamoose v. United States, 206 Fed. 374, 376, ...C. C. A. ....

The natural apparent meaning of the terms of a statute should always be preferred to any recondite signification discovered only by study, ingenuity, and strong desire. United States v. Ninety-Nine Diamonds, 139 Fed. 961, 964, 72 C. C. A. 9, 12; First Nat. Bank of Anamoose v. United States, 206 Fed. 374, 376, 124 C. C. A. 256. The natural apparent meaning of this statute is that Congress relied, and intended to rely, upon the oath to the periodical report and the penalty for perjury in wilfully falsely making it as security for the completeness and truth of the report, and upon the penalty for the failure to file it as security for its filing alone. The terms of the statute are plain and they fail to declare the innocent omission of an instance of excessive service from or the mistake in a report an offense punishable by the fines it specifies. Reason and authority alike teach that the act of omitting from a periodical report filed in good faith an instance or item which should have been included

therein, or a mistake in the information which the report contains is not the offense of failing to file any such periodical report. United States v. Four Hundred Twenty Dollars, 162 Fed. 803, 804; Bonnell v. Griswold, 80 N. Y. 128, 132, 133; Pier v. Hanmore, 86 N. Y. 95, 100; Matthews v. Patterson, 26 Pac. 812, 813; Whitney Arms Co. v. Barlow, 63 N. Y. 62.

And the conclusion is that an omission by a carrier from the periodical report of the instances of excessive service of its employees made and filed in good faith within the time prescribed therefor by the Interstate Commerce Commission under the amendment of section 20 of the act to regulate commerce, 36 Stat. 556, of one or more instances that should have been included therein, or any mistake of law or fact therein made in good faith, does not subject the carrier to liability for the penalties or forfeitures denounced by that amendment for the failure to file a periodical report. The judgment below must, therefore, be reversed and the case must be remanded to the court below for further proceedings not inconsistent with the views expressed in this opinion, and

It is so ordered.

Filed March 21, 1914.

OREGON-WASHINGTON R. & NAV. CO. V. UNITED STATES.

(Circuit Court of Appeals, Ninth Circuit.)

(May 3, 1915.)

No. 2490. 222 Fed. 887.

Ross, Circuit Judge. The government brought this action to recover 30 penalties, of $100 each, for the alleged violation of a certain order made by the Interstate Commerce Commission, the authority of which is not questioned. It was made June 28, 1911, and is as follows:

> "It is ordered, that all carriers subject to the provisions of the act entitled 'An act to promote the safety of employes and travelers upon railroads by limiting the hours of service of employes thereon,' approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employes subject to said act have been on duty for a longer period than that provided in said act.
>
> "It is further ordered, that the accompanying forms, entitled 'Interstate Commerce Commission Hours of Service Report,' and the method embodied in the instructions therein set forth, be and the same are hereby adopted and prescribed, and all common carriers subject to the said act are hereby notified to use and follow the said prescribed forms and method in making monthly reports of hours of service of employes on duty for a longer period than that named in said act, commencing with and making the first report for the month of July, 1911.
>
> "And it is further ordered, that copies of said forms, together with a copy of this order, be forthwith served upon all common carriers subject to said act."

The fact is conceded that the plaintiff in error is a common carrier engaged in interstate commerce, and that its railroad extends through the district of Oregon, and

that it failed to include in its reports to the Commission the specific instances counted on in the complaint in which employes of the plaintiff in error were permitted to remain on duty for a longer period than that prescribed by Act March 4, 1907, c. 2939, commonly called the Hours of Service Act (34 Stat. 1415; [Comp. St. 1913, Secs. 8677-8680]); but it seems to be also conceded by the respective parties that those omissions were inadvertently made, and that all other instances in which such employes were permitted to work overtime were duly reported to the Commission by the railroad company; and the question of law presented for decision is whether such inadvertent omissions rendered the company liable for the fines. The court below, in granting the government's motion for a directed verdict in its favor, and in refusing a like motion made by the defendant railroad company for one in its favor, held that it did, and the sole question for determination here is whether or not that ruling was correct.

The Interstate Commerce Act approved February 4, 1887 (24 Stat. 386, c. 104, Sec. 20), as amended by Act June 18, 1910, c. 309, Sec. 14, 36 Stat. 556 (Comp. St. 1913, Sec. 8592), after authorizing the Commission to require a certain report from all common carriers subject to the provisions of the act touching their income, expenses, indebtedness, etc., and to fix the time and prescribe the manner in which such reports shall be made, provides that:

> "If any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for

making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the Commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures last above provided."

The order of the Commission above set out, upon which the action is based, was made pursuant to that statutory provision. In the recent case of San Pedro, Los Angeles & Salt Lake Railroad Co. v. United States (decided February 1, 1915), 220 Fed. 737, ... C. C. A. .... in considering the Hours of Service Act, we held that the whole of it "must be taken together, and be so construed as to give effect to its humane purpose, and at the same time to give the railroad companies the benefit of the exceptions and provisos in all cases fairly brought within their terms and true intent"; that the paramount purpose of the act was to prevent the overworking of the employes, to the end that their efficiency be not impaired; and that the obligation was thereby imposed upon the carriers to comply with that requirement, unless prevented therefrom because of a valid excuse.

We think the same common sense and just construction should be placed upon the order of the Interstate Commerce Commission adopted for the purpose of giving effect to that act, and that an omission honestly and inadvertently made from a report of a carrier, filed pursuant to the order, should not be held to subject the carrier to the penalty prescribed by the act of Congress. Undoubtedly the courts should, and no doubt always will, scrutinize any and all such omissions with care (and in jury cases, as was the present, so instruct the jury), to the end that there be no evasion of the requirements; but we cannot think that an honest mistake or omission fairly comes within the provision of either the statute or the order of the Commission. The only reported case cited by counsel directly upon the point is that of Northern Pacific Railroad Co. v. United States, 213 Fed. 162, 129 C. C. A. 514, decided by the Circuit Court of Appeals for the Eighth Circuit, which is in accordance with these views.

It results that the judgment must be and hereby is reversed, and the cause remanded to the court below for a new trial in accordance with the views above expressed.

In the United States Circuit Court of Appeals
For the Seventh Circuit.
No. 2217.
October 5, 1915.
227 Fed. 411.

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Error to the District Court of the United States for the Northern District of Illinois, Eastern Division.

Before Baker, Kohlsaat and Mack, Circuit Judges.

By this writ of error, Elgin, Joliet & Eastern Railway Company seeks to reverse a judgment of $3,000 on a directed verdict, based on thirty counts, each charging a violation of an order of the Interstate Commerce Commission, issued on June 28, 1911, and made pursuant to Sec. 20 of the Act to Regulate Commerce as amended in 1910 (36 Stat. 556).

Prior to 1910, Sec. 20 authorized the Commission to require annual reports under oath containing a vast amount of statistical information and provided that

> "if any carrier, shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto."

By the amendment, the following clause was added:

> "The Commission shall also have authority by general or special orders to require said carriers to file both periodical and special reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the Commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures last above provided."

The Hours of Service Act (34 Stat. 1416), which the Commission is required to enforce, provides that no train dispatcher "shall be permitted to be and remain on duty for a longer period than nine hours in any 24 hour period * * * except in case of emergency when the employees named may be permitted to be and remain on duty for four additional hours on not exceeding three days in any week."

The Commission's order as set out in the declaration and stipulation of facts on which the case was heard reads as follows:

> "It is Ordered, That all carriers subject to the provisions of the Act entitled 'An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon,' approved March 4, 1907, report within 30 days after the end of each month under oath, all instances where employees subject to said Act have been on duty for a longer period than that provided in said Act."

The declaration charged that the defendant "having theretofore failed to make and file with said Commission in any form whatsoever a report of all the instances

wherein its employees subject to" the Hours of Service Act were on duty in "December, 1912, for a longer period than that provided in said Act, did, on the 1st day of February, 1913, continue to be in default with respect thereto and did fail to make and file with said Commission any report of the following instances" alleging specific instances of service in excess of nine hours.

The stipulated facts showed that the employees in question had been in service more than nine but less than thirteen hours for three consecutive days in December, 1912; that for December, 1912, the form of report required by the Commission was made within thirty days and that it contained no reference to the excess hours in question. The court rejected defendant's offer to prove the facts which it claimed constituted an emergency within the statute and its further offer to prove its belief that the facts did constitute a statutory emergency and that these instances were omitted from the regular monthly report only because of the good faith, understanding and belief of defendant's chief dispatcher, whose duty it was to make and who, in fact, made the reports, that under the Commission's order there was no obligation to include these instances and that the omission was not due to any intention to evade either the Hours of Service Act or the Commission's order.

Mack, Circuit Judge, (after stating the facts) delivered the opinion of the court:

While questions as to the scope of the Commission's order and the existence of an emergency have been fully presented, we find it unnecessary to determine them, in view of the conclusions which we have reached as to the construction of Sec. 20.

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The section originally required annual reports from carriers. A mass of detailed statistical information was to be included therein. Accurate information was, of course, desirable. Whoever was charged with the duty of preparing and swearing to such a report must necessarily, however, rely upon the statement of others and upon documents and statistics. Clerical errors might readily occur; both the facts and the law applicable thereto might be uncertain and give rise to what might ultimately be held a mistaken interpretation.

While Congress undoubtedly expected and required an accurate report, it did not, in this section, prescribe a penalty for failure to make the report absolutely exact but for failure to make and file a report within a specified time. Errors and omissions, whether accidental or wilful, might readily escape detection by the executive officials of the carrier and by the Commission; but a failure to file any annual report within the fixed period would be quickly discovered. The penalty of $100 for each day's delay in filing the report would be sufficient to compel prompt attention to such a requirement.

A wilfully sworn false report would subject the affiant to penalties for perjury and the carrier to indictment under Sec. 10 of the Act. These were the express statutory safeguards designed to assure the required accuracy. But in the absence of a clear expression of such intention, it will not be presumed that Congress purposed inflicting on the carrier such a penalty as $100 a day for the innocent omission or innocent misstatement of some one of the thousands of facts required to be reported annually. No such expression appears in and no such intention is to be gathered from the words of the statute.

The penalty prescribed is not for filing a false or erroneous report; unlike the acts considered in 134,901 feet of Pine Lumber, 4 Blatchf. 182; No. 10,523, 18 Fed. Cas. 705, and The Ship Anna, 1 Dall. 197, the statute does not expressly characterize the required report as a *true* report, and punish the failure to make such a report; what it penalizes is the delay in filing any report of the general character specified in the Act. To interpret the penal clause broadly as covering a failure not merely to file a report but also to include therein each item with absolute accuracy would violate the fundamental rules for the construction of penal statutes and, in case the error remained undiscovered for a long time, would subject the carrier to enormous and entirely disproportionate penalties.

The amendment of 1910 emphasizes this construction; it repeats the words of the original clause; it again exacts the penalty for the delay in filing the required report, not for omissions therefrom. While the likelihood of clerical errors and perhaps of mistakes either of law or of fact may be less in periodical or special reports than in the general annual report, the amendment is to be construed in harmony with the original act; so construed, it cannot be held to extend to omissions from or misstatements in the periodical report filed in due time, whether such omissions or misstatements be wilful or accidental.

We concur fully in the opinion rendered by Judge Sanborn in U. S. v. N. P. Ry. Co., 213 Fed. 162 (C. C. A., 8th Circuit), followed in O.-W. R. & N. Co. v. U. S., 222 Fed. 887 (C. C. A., 9th Circuit). Compare, too, U. S. v. Four Hundred and Twenty Dollars, 162 Fed. 803.

As the sufficiency of the declaration has not been and is not questioned by plaintiff in error, it may be construed, especially after verdict, as charging in substance that no report of service for December, 1912, was rendered; this averment, however, is contrary to conceded facts. A verdict for defendant should have been directed.

The judgment will be reversed and the cause remanded for retrial.

UNITED STATES *v.* NORTHERN PACIFIC RAILWAY COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 44. Argued October 27, 1916.—Decided December 4, 1916.

A railroad company which, being required by order of the Interstate Commerce Commission to report all instances in which its employees have been kept on duty longer than the period provided by the Hours of Service Act, 34 Stat. 1415, omits from its report as filed certain instances of excessive service, under the honest but mistaken belief that they did not come within that act, is not liable to the penalties prescribed by § 20 of the Act to Regulate Commerce, as amended June 18, 1910, 36 Stat. 539, 556, where it appears that the mistake was not only honest but was made in a genuinely doubtful case.

Section 20 in its penal features should be applied only to cases coming plainly within its terms. *Semble*, that the only sanction securing the correctness of such reports is the penalty for the perjury committed when the oath under which they are made is violated.

In construing a penal provision, the court will be slow to attribute to Congress an intention to exact punishment which the Government itself has conceded would be greatly disproportionate to the offence.

Statutes should be construed, if possible, so that their requirements shall be apparent in their own terms rather than dependent upon the discretion of executive officers.

213 Fed. Rep. 162, affirmed.

THIS is a civil proceeding brought by the United States in the United States District Court for the District of North Dakota, to recover $500 from the Northern Pacific Railway Company for the claimed failure to file, for five successive days, with the Interstate Commerce Commission, a report of violations of the Hours of Service Act, as required by an order of the Commission issued June 28, 1911.[1] The order was made under authority of § 20 of the Act to Regulate Commerce, as amended June 18th,

1910, 36 Stat. 539, 556, and has the force of statute law. It requires the carrier to report "under oath" within thirty days after the end of each month, all instances where employees have been on duty for a longer period than that provided in said act, which in this case was sixteen hours.

The District Court rendered judgment for the Government, which was reversed by the Circuit Court of Appeals for the Eighth Circuit (213 Fed. Rep. 162). The case is here for decision on writ of certiorari.

The judgment of the District Court was rendered on the pleadings, the admitted facts of the case being as follows:

Five employees of the defendant were called to take charge of a wrecking train at 8.10 o'clock p. m. October 29, 1911, but, before they reported at the place of duty, it was ascertained that such train would not be needed and when they arrived they were notified that their services would not then be required, but that they should report for duty at 10.35 o'clock p. m. the same evening. From 8.10 to 10.35 o'clock they did not render any service "save that they kept alive the fire in the engine during said period." At 10.35 o'clock the five men entered upon a freight train run, which, because of hot boxes, was delayed so that it did not arrive at destination until 1.15 o'clock p. m. the next day.

If the service of the men were considered as beginning at 8.10 o'clock, the hour for which they were called, they were on duty for 17 hours and 5 minutes, but if the time were reckoned from 10.35 p. m., when the men actually took charge of the freight train, they were on duty less than sixteen hours. It is admitted that the officials of the railway company believed in good faith that the time of the men should be reckoned from 10.35 p. m., and not from 8.10 p. m., and that, for that reason, when next after October 30th, 1911, they filed their report of employees

subject to the act who had been kept on duty for a longer period than sixteen hours, the names of the members of this crew were omitted, although the names of many other employees who had been kept on duty longer than the statutory limit were stated in that report.

It was conceded at the hearing in the Circuit Court of Appeals that the United States had sued the company for the "forfeitures" prescribed for these excessive services under discussion in this case, and had secured a judgment which had been paid, and that thereby it was determined, for the purposes of this suit, that these employees were on duty from 8.10 o'clock p. m., and therefore for more than sixteen hours.

The Government's claim in the case is for the omission for five days to file the report and it prays judgment for "forfeitures" aggregating $500, although when the complaint was filed the report claimed to be defective had been on file from November 30th, 1911, to September 14th, 1912, and if the "forfeitures" of $100 per day prescribed by the law for each day of failure to file a proper report were allowed, the amount of recovery by the Government would be $28,900, and it is only by grace of the public officials that the claim in the suit was not for this amount instead of for $500.

Mr. Assistant Attorney General Underwood for the United States.

Mr. Emerson Hadley, with whom *Mr. Charles W. Bunn* was on the brief, for respondent.

MR. JUSTICE CLARKE, after making the foregoing statement, delivered the opinion of the court.

It will be seen from the foregoing statement of facts that the question presented by the record in this case for decision is: Assuming that the law required that in the

report of the company filed on November 30th, 1911, the names of these five employees of the defendant should have been included as having been on duty for more than sixteen hours, and that their names were omitted from that report because it was in good faith believed that their hours of service should be computed from 10.35 o'clock p. m., and that, therefore, they had not been on duty in excess of sixteen hours, is the company liable for the "forfeitures" prescribed by the statute, judgment for which was prayed for in the complaint?

Section 20 of the Act to Regulate Commerce of February 4, 1887, as amended June 18, 1910, 36 Stat. 556, requires the filing of elaborate annual reports by carriers and also the filing of such special reports as the Commission may, by general or special order, require. On the twenty-eighth day of June, 1911, the Commission ordered that all carriers subject to the provisions of the act should report "under oath" within thirty days after the end of each month all instances of employees who had been on duty for a longer time than that required by the act. It is for violation of this order, which has the effect of statute law, that this suit was instituted, it being admitted by the Government that the failure to mention these five men in the report by the defendant, filed at the proper time, and which contained a report of many men kept on duty for a period longer than the time allowed by law, was due to the fact that it in good faith believed that these men commenced their time of service at 10.35 instead of at 8.10 o'clock, and that therefore they were not on duty more than the sixteen hours prescribed by the statute. The defendant in error contends that judgment is asked for an omission caused by an honest mistake with respect to a genuinely doubtful case in a report which was properly filed and this, it is claimed, is not a violation of the law. The statute is a penal one and should be applied only to cases coming plainly within its terms. *Steam*

Engine Co. v. *Hubbard*, 101 U. S. 188. While the reports filed must be truthful reports (*Yates* v. *Jones National Bank*, 206 U. S. 158), yet, since they must be made under oath, the penalties for perjury would seem to be the direct and sufficient sanction relied upon by the law-making power to secure their correctness.

We are confirmed in this conclusion by the fact that the annual report required of carriers by this same § 20 of the act calls for so great an amount of detailed information that it would be difficult, if not impossible, for any one to prepare such a report without making some unintentional omission or mistake, and we cannot bring ourselves to think that Congress intended to punish such an innocent mistake or omission with a penalty of $100 a day.

There are, to be sure, many statutes which punish violations of their requirements regardless of the intent of the persons violating them, but innocent mistakes, made in reporting facts, where the circumstances are such that candid minded men may well differ in their conclusions with respect to them, should not be punished by exacting penalties, except where the express letter of the statute so requires, and we conclude that the section under discussion contains no such requirement. In reports in which a mistake is much more likely to prove harmful than in such a report as we have here, the national banking laws punish mistakes only where "knowingly" made.

It is argued that if good faith will excuse an omission or a mistaken statement in this report, it will be widely taken advantage of as a cover for making false and fraudulent statements in such reports in the future. Such a prospect seems quite groundless, since many, if not most, criminal laws imposing penalties are made applicable only in cases where corrupt intent or purpose is established to the satisfaction of a court or jury, yet such requirement has not been found in practice to be an encouragement to wrongdoing.

The fact that the Government sues for only one fifty-seventh part of the forfeitures which had accrued under the construction of the rule and statute contended for by it, should make us slow to attribute to Congress a purpose to exact what is thus admitted to be a punishment greatly disproportionate to the offense. Statutes should be construed, as far as possible, so that those subject to their control may, by reference to their terms, ascertain the measure of their duty and obligation, rather than that such measure should be dependent upon the discretion of executive officers, to the end that ours may continue to be a Government of written laws rather than one of official grace.

It being very clear that it is not the purpose of the law under discussion to punish honest mistakes, made in a genuinely doubtful case, the decision of the Circuit Court of Appeals is

Affirmed.